



GOVERNMENT OF INDIA  
LEGISLATIVE DEPARTMENT

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# LEGISLATION AND ORDERS RELATING TO THE WAR

VOLUME I.

(THIRD EDITION)



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## PREFACE:

In this the third edition of "Legislation and Orders relating to the War" the general features of the second edition have been maintained, but for convenience of reference it has been found necessary to publish the compilation in three Volumes instead of two. The arrangement of Volume I is the same as in the second edition. It consists of five parts and contains the following corrected up to the 1st June, 1942:—

- I. Acts of Parliament ;
- II. Acts of the Central Legislature.
- III. Ordinances made by the Governor General.
- IV. Proclamations and Notifications published in India relating to the outbreak of war.
- V. Royal Proclamations, Orders in Council, etc.

2. Volume II of this edition contains the Rules and Orders made under the Defence of India Act, 1939, and is corrected up to the 1st January, 1942.

3. Volume III consists of four parts as follows :—

- VII. Rules and Orders under Central Acts other than the Defence of India Act, 1939.
- VIII. Rules and Orders under Ordinances.
- IX. Orders of the Crown Representative.
- X. Miscellaneous notifications relating to the present emergency.

The material in this Volume is corrected up to the 1st May, 1942.

SIMLA,  
*The 10th September, 1942.*

L. E. JAMES,  
*Assistant Secretary,  
Legislative Department,  
Government of India.*



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PART I  
ACTS OF PARLIAMENT

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*Emergency Powers (Defence) Act, 1939—contd.*

<sup>1</sup>[ (aa) make provision for the apprehension and punishment of offenders and for their trial by such courts, not being courts-martial, and in accordance with such procedure as may be provided for by the Regulations, and for the proceedings of such courts being subject to such review as may be so provided for, so, however, that provision shall be made for such proceedings being reviewed by not less than three persons who hold or have held high judicial office, in all cases in which sentence of death is passed, and in such other circumstances as may be provided by the Regulations ;]

(b) authorise—

(i) the taking of possession or control, on behalf of His Majesty, of any property or undertaking ;

(ii) the acquisition, on behalf of His Majesty, of any property other than land ;

(c) authorise the entering and search of any premises ; and

(d) provide for amending any enactment, for suspending the operation of any enactment, and for applying any enactment with or without modification.

(3) Defence Regulations may provide for empowering such authorities, persons or classes of persons as may be specified in the Regulations to make orders, rules and bye-laws for any of the purposes for which such Regulations are authorised by this Act to be made, and may contain such incidental and supplementary provisions as appear to His Majesty in Council to be necessary or expedient for the purposes of the Regulations.

(4) A Defence Regulation, and any order, rule or bye-law duly made in pursuance of such a Regulation, shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

(5) Nothing in this section shall authorise the imposition of any form of compulsory naval, military or air force service or any form of industrial conscription, or the making

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<sup>1</sup> *Ins.*, s. 1(2) of the Emergency Powers (Defence) (No. 2) Act, 1940 (3 & 4 Geo. 6, Ch. 45), *infra*, p. 61.

*Emergency Powers (Defence) Act, 1939—contd.*

of provision for the trial by courts-martial of persons not being persons subject to the Naval Discipline Act, to military law or to the Air Force Act.

(6) In this section the expression “enactment” includes any enactment of the Parliament of Northern Ireland.

2.—(1) The Treasury may by order provide for imposing and recovering, in connection with any scheme of control contained in or authorised by Defence Regulations, such charges as may be specified in the order; and any such order may be varied or revoked by a subsequent order of the Treasury. Power to impose charges.

(2) Any charges recovered by virtue of such an order as aforesaid shall be paid into the Exchequer of the United Kingdom or, if the order so directs, be paid into such public fund or account as may be specified in the order.

(3) Any such order as aforesaid shall be laid before the Commons House of Parliament as soon as may be after it is made, but, notwithstanding anything in sub-section (4) of section one of the Rules Publication Act, 1893, shall be deemed not to be a statutory rule to which that section applies.

(4) Any such order as aforesaid imposing or increasing a charge shall cease to have effect on the expiration of the period of twenty-eight days beginning with the day on which the order is made, unless at some time before the expiration of that period it has been approved by a resolution of the Commons House of Parliament, without prejudice, however, to the validity of anything previously done under the order or to the making of a new order.

In reckoning any period of twenty-eight days for the purposes of this sub-section, no account shall be taken of any time during which Parliament is dissolved or prorogued, or during which the Commons House is adjourned for more than four days.

(5) Without prejudice to the preceding provisions of this section, any Defence Regulations may provide—

(a) for charging, in respect of the grant or issue of any licence, permit, certificate or other document for the purposes of the Regulations, such fee not exceeding five pounds as may be prescribed under the Regulations with the approval of the Treasury; and

(b) for imposing and recovering such charges as may be so prescribed in respect of any services which,

*Emergency Powers (Defence) Act, 1939—contd.*

in pursuance of such Regulations, are provided on behalf of His Majesty, or under arrangements made on behalf of His Majesty, other than services necessary for the performance of duties imposed by law upon the Crown ;

and all sums received by way of such fees or charges as aforesaid shall be paid into the Exchequer of the United Kingdom or, if the Treasury so direct, be paid into such public fund or account as they may determine.

Extra-  
territorial  
operation of  
Defence  
Regulations.

3.—(1) Unless the contrary intention appears therefrom, any provisions contained in, or having effect under, any Defence Regulation shall—

- (a) in so far as they specifically impose prohibitions, restrictions or obligations in relation to ships, vessels or aircraft, or specifically authorise the doing of anything in relation to ships, vessels or aircraft, apply to all ships, vessels or aircraft in or over the United Kingdom and to all British ships or aircraft, not being Dominion ships or aircraft, wherever they may be ; and
- (b) in so far as they impose prohibitions, restrictions or obligations on persons, apply (subject to the preceding provisions of this sub-section) to all persons in the United Kingdom and all persons on board any British ship or aircraft, not being a Dominion ship or aircraft, and to all other persons being British subjects except persons in any of the following countries or territories, that is to say,—
  - (i) a Dominion,
  - (ii) India, Burma and Southern Rhodesia,
  - (iii) any country or territory to which any provisions of this Act can be extended by Order in Council, and
  - (iv) any other country or territory, being a country or territory under His Majesty's protection or suzerainty :

Provided that Defence Regulations may make provision whereby the owner, manager or charterer of any British ship or aircraft, being a person resident in the United Kingdom or a corporation incorporated under the law of any part of the United Kingdom, is subjected to restrictions in respect of the employment of persons in any foreign

*Emergency Powers (Defence) Act, 1939—contd.*

country or territory in connection with the management of the ship or aircraft.

(2) In this section the expression "Dominion ship or aircraft" means a British ship or aircraft registered in a Dominion, not being a ship or aircraft for the time being placed at the disposal of, or chartered by or on behalf of, His Majesty's Government in the United Kingdom; and, for the purposes of subsection (1) of this section, any ship or aircraft registered in India, Burma or Southern Rhodesia, not being a ship or aircraft for the time being placed at the disposal of, or chartered by or on behalf of, His Majesty's Government in the United Kingdom, shall be treated as if it were a Dominion ship or aircraft.

(3) Subsection (1) of this section shall apply in relation to British protected persons, as that sub-section applies in relation to British subjects.

4.—(1) His Majesty may by Order in Council direct that the provisions of this Act other than this section shall extend with such exceptions, adaptations and modifications, if any, as may be specified in the Order,—

Provisions  
as to  
colonies, etc.

(a) to the Isle of Man or any of the Channel Islands,

(b) to Newfoundland or any colony,

(c) to any British protectorate,

(d) to any territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Majesty, and is being exercised by His Majesty's Government in the United Kingdom, and

(e) (to the extent of His Majesty's jurisdiction therein) to any other country or territory being a foreign country or territory in which for the time being His Majesty has jurisdiction;

and, in particular, but without prejudice to the generality of the preceding provisions of this section, such an Order in Council may direct that any such authority as may be specified in the Order shall be substituted for His Majesty in Council as the authority empowered to make Defence Regulations for the country or territory in respect of which the Order is made.

(2) His Majesty may by Order in Council make, or authorise the making of, provision whereby persons offending against any Defence Regulations may be apprehended, tried and punished in the United Kingdom, or any

*Emergency Powers (Defence) Act, 1939—contd.*

of the countries or territories specified in the preceding sub-section, whether section one of this Act extends to that country or territory or not.

Extra-territorial operation of defence legislation of certain Dominions, etc.

5.—(1) If and so far as the provisions of any Act for purposes of defence passed by the Parliament of the Commonwealth of Australia or by the Parliament of the Dominion of New Zealand purport to have extra-territorial operation as respects—

- (a) ships or aircraft registered in the said Commonwealth or Dominion, or
- (b) the employment of persons in relation to British ships or aircraft by owners, managers or charterers of such ships or aircraft who are persons resident in the said Commonwealth or Dominion or corporations incorporated under the law of the said Commonwealth or Dominion or any part thereof,

the said provisions shall be deemed to have such operation.

(2) No law made for purposes of defence by the Indian Legislature or the Federal Legislature of India or by the Legislature of Burma shall, on the ground that it would have extra-territorial operation, be deemed to be invalid in so far as it makes provision whereby any owner, manager or charterer of a British ship or aircraft who is a person resident in India or Burma or a corporation incorporated under the law of India or Burma or any part thereof is subjected to restrictions in respect of the employment of persons in relation to the ship or aircraft.

Nothing in this sub-section shall be taken to prejudice the effect of section ninety-nine of the Government of India Act, 1935, or section thirty-three of the Government of Burma Act, 1935.

28 Geo. 5, c. 2.  
27 Geo. 5, c. 3.

(3) If and so far as the provisions of any law for purposes of defence made by the Legislature of Southern Rhodesia purport to have extra-territorial operation as respects—

- (a) aircraft registered in Southern Rhodesia, or
- (b) the employment of persons in relation to British aircraft by owners, managers or charterers of such aircraft who are persons resident in Southern Rhodesia or corporations incorporated under the law of Southern Rhodesia,

the said provisions shall be deemed to have such operation.

6.—(1) If, as respects any proceedings before a court (whether instituted before or after the commencement of

Hearing of proceedings in camera.

*Emergency Powers (Defence) Act, 1939—contd.*

this Act), the court is satisfied that it is expedient, in the interests of the public safety or the defence of the realm so to do, the court—

- (a) may give directions that, throughout, or during any part of, the proceedings, such persons or classes of persons as the court may determine shall be excluded ;
- (b) may give directions prohibiting or restricting the disclosure of information with respect to the proceedings.

The powers conferred by this sub-section shall be in addition to, and not in derogation of, any other powers which a court may have to give such directions as aforesaid.

(2) If any person contravenes any directions given by a court under the preceding sub-section, then, without prejudice to the law relating to contempt of court, he shall be liable, on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding one hundred pounds or to both such imprisonment and such fine, or, on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine not exceeding five hundred pounds or to both such imprisonment and such fine.

(3) The operation of subsection (4) of section eight of the Official Secrets Act, 1920, shall be suspended during the continuance in force of this Act.

10 & 11  
Geo. 5, c. 75.

7. Every document purporting to be an instrument made or issued by any Minister or other authority or person in pursuance of any provision contained in, or having effect under, Defence Regulations, and to be signed by or on behalf of the said Minister, authority or person, shall be received in evidence, and shall, until the contrary is proved, be deemed to be an instrument made or issued by that Minister, authority or person ; and *prima facie* evidence of any such instrument as aforesaid may, in any legal proceedings (including arbitrations), be given by the production of a document purporting to be certified to be a true copy of the instrument by, or on behalf of, the Minister or other authority or person having power to make or issue the instrument. Proof of instruments.

Provisions  
as to certain  
Orders in  
Council.

8.—(1) Every Order in Council containing Defence Regulations shall be laid before Parliament as soon as may be after it is made ; but, notwithstanding anything in subsection (4) of section one of the Rules Publication Act, 1893,



*Emergency Powers (Defence) Act, 1939—contd.*

such an Order shall be deemed not to be a statutory rule to which that section applies.

(2) If either House of Parliament, within the next twenty-eight days on which that House has sat after such an Order in Council as aforesaid is laid before it, resolves that the Order be annulled, the Order shall thereupon cease to have effect except as respects things previously done or omitted to be done, without prejudice, however, to the making of a new Order.

(3) Any power conferred by the preceding provisions of this Act to make an Order in Council shall be construed as including a power to vary or revoke the Order.

Saving of  
prerogative  
powers.

9. The powers conferred by or under this Act shall be in addition to, and not in derogation of, the powers exercisable by virtue of the prerogative of the Crown.

Interpreta-  
tion.

10.—(1) In this Act the expression "Dominion" means any Dominion within the meaning of the Statute of Westminster, 1931, except Newfoundland, and includes any territory administered by His Majesty's Government in such a Dominion. 22 Geo. 5,  
c. 4.

(2) References in this Act to British aircraft shall be construed as references to aircraft registered in any part of His Majesty's dominions, in any British protectorate or in any territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Majesty and is being exercised by the Government of any part of His Majesty's dominions.

(3) For the avoidance of doubt it is hereby declared that any reference in this Act to Defence Regulations includes a reference to regulations made under any provision of this Act, as extended to any country or territory by an Order in Council under this Act, and that any reference in this Act to any country or territory includes a reference to the territorial waters, if any, adjacent to that country or territory.

Duration of  
Act.

11.—(1) Subject to the provisions of this section, this Act shall continue in force for the period of <sup>1</sup>[two years] beginning with the date of the passing of this Act, and shall then expire :

Provided that, if at any time, while this Act is in force, an address is presented to His Majesty by each House of

<sup>1</sup> *Statute, Emergency Powers (Defence) Act, 1940 (3 & 4 Geo. 6, Ch. 20),* *infra*, p. 44.

*Emergency Powers (Defence) Act, 1939—concl'd.—Prize Act, 1939.*

Parliament praying that this Act should be continued in force for a further period of one year from the time at which it would otherwise expire, His Majesty may by Order in Council direct that this Act shall continue in force for that further period.

(2) Notwithstanding anything in the preceding subsection, if His Majesty by Order in Council declares that the emergency that was the occasion of the passing of this Act has come to an end, this Act shall expire at the end of the day on which the Order is expressed to come into operation.

(3) The expiry of this Act shall not affect the operation thereof as respects things previously done or omitted to be done.

12. This Act may be cited as the Emergency Powers short title. (Defence) Act, 1939.

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THE PRIZE ACT, 1939.

(2 and 3 GEO. 6, CH. 65.)

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CHAPTER 65.

*An Act to apply prize law to aircraft; to amend and explain the enactments relating to prize; and to provide for purposes connected with the matters aforesaid.*

[1st September, 1939.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1.—(1) Subject to the provisions of this section the law relating to prize shall apply in relation to aircraft and goods carried therein as it applies in relation to ships and goods carried therein, and shall so apply notwithstanding that the aircraft is on or over land. Application of prize law to aircraft.

(2) The amendments specified in the second column of Part I of the Schedule to this Act (being amendments necessary for giving effect to the preceding sub-section) shall be made in the Acts specified in the first column of that Part of that Schedule.

*Prize Act, 1939—contd.*

(3) The provisions of the Naval Prize Act, 1864, specified in Part II of the Schedule to this Act shall not apply in relation to aircraft or goods carried therein taken as prize. 27 & 28 Vict.,  
c. 25.

Establish-  
ment of  
prize courts  
outside His  
Majesty's  
dominions.

2.—(1) The power conferred by section two of the Prize Courts Act, 1894, to issue any commission, warrant or instructions for the purpose of commissioning or regulating the procedure of a prize court, and to establish a Vice-Admiralty Court under the authority of any such commission or warrant, shall be exercisable not only in relation to a place in a British possession but also in relation to a place in any of the following countries and territories, that is to say,— 57 & 58 Vict.,  
c. 39.

- (a) any British protectorate,
- (b) any territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Majesty, and is being exercised by His Majesty's Government in the United Kingdom, in the Commonwealth of Australia or in the Dominion of New Zealand, and
- (c) any other country or territory in which for the time being His Majesty has jurisdiction in matters of prize ;

and accordingly subsection (1) of the said section shall have effect as if the reference therein to a British possession included a reference to any of the countries and territories mentioned in paragraphs (a) to (c) of this sub-section ; and subsection (2) of the said section shall, in relation to any of the said countries and territories, have effect as if for the reference in that sub-section to the Vice-Admiral of the possession, there were substituted a reference to such authority as may be prescribed, in relation to that country or territory, by Order of His Majesty in Council.

(2) The Admiralty may appoint a judge, registrar and marshal, and other officers, of any Vice-Admiralty court established by any commission or warrant the issue of which is authorised by section two of the Prize Courts Act, 1894, as amended by this section, in any of the countries and territories mentioned in paragraphs (a) to (c) of the preceding subsection. 57 & 58 Vict.,  
c. 39.

(3) Any commission or warrant for the purpose of commissioning or regulating the procedure of a prize court which has been issued before the commencement of this Act and is in force at the commencement of this Act, shall have effect as if any reference therein to ships included a reference to aircraft.

*Prize Act, 1939—contd.*53 & 54 Vict.,  
c. 27.57 & 58 Vict.,  
c. 39.27 & 28 Vict.,  
c. 25.

3. For the removal of doubts it is hereby declared that Certain  
Colonial Courts of Admiralty within the meaning of the courts  
Colonial Courts of Admiralty Act, 1890, courts to which declared to  
paragraph (b) of the proviso to subsection (3) of section be prize  
two of that Act applies by virtue of an Order in Council courts.  
under section twelve of that Act, and Vice-Admiralty courts  
established by any commission or warrant the issue of which  
is authorised by section two of the Prize Courts Act, 1894,  
as amended by this Act, are prize courts within the meaning  
of the Naval Prize Act, 1864.

4.—(1) This Act extends to the following countries and territories, that is to say,— Extent of  
this Act and  
existing  
Prize Acts.

- (a) the United Kingdom, the Channel Islands and the Isle of Man,
- (b) the Commonwealth of Australia and the Dominion of New Zealand,
- (c) British India and British Burma,
- (d) Newfoundland and every colony,
- (e) every British protectorate, and
- (f) every territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Majesty, and is being exercised by His Majesty's Government in the United Kingdom, in the Commonwealth of Australia or in the Dominion of New Zealand,

and (to the extent of His Majesty's jurisdiction therein in matters of prize) to every other country or territory in which for the time being His Majesty has such jurisdiction.

(2) The enactments relating to prize, as amended by this Act, shall extend to the countries and territories mentioned in paragraphs (e) and (f) of the preceding subsection, and (to the extent of His Majesty's jurisdiction therein in matters of prize) to every other country or territory in which for the time being His Majesty has such jurisdiction.

5. This Act may be cited as the Prize Act, 1939; and the Naval Prize Acts, 1864 to 1916, and this Act may be cited together as the Prize Acts, 1864 to 1939. short title  
and citation.

*Prize Act, 1939—contd.*

## SCHEDULE.

## PART I.

## Section 1.

## AMENDMENTS OF PRIZE ACTS IN RELATION TO AIRCRAFT.

Act amended.	Amendment.
<p>The Naval Prize Act, 1864 (27 &amp; 28 Vict., c. 25).</p>	<p>In section two, for the words “and others on board any of Her Majesty’s ships of war” there shall be substituted the words “airmen and others on board any of His Majesty’s ships of war or any of His Majesty’s military aircraft”; for the words “(other than ships)” there shall be substituted the words “but does not include ships, and does not include aircraft which are not part of the cargo of a ship”; and at the end of that section there shall be inserted the following paragraphs:—</p> <p>“The term ‘aircraft papers’ includes all books, passes, charter-parties, bills of lading, manifests, certificates, licences, lists, tickets, notes, letters and other documents and writings delivered up or found on board a captured aircraft.</p> <p>“The term ‘any of His Majesty’s military aircraft’ includes any aircraft belonging to His Majesty’s naval, military or air forces, and any hired armed aircraft in His Majesty’s service.”</p>
	<p>In section sixteen, after the second paragraph thereof there shall be inserted the following paragraphs:—</p> <p>“Every aircraft taken as prize and brought to a place within the jurisdiction of a prize court shall, forthwith, and without bulk</p>

Prize Act, 1939—contd.

SCHEDULE—contd.

Act amended.	Amendment.
<p>The Naval Prize Act, 1864 (27 &amp; 28 Vict., c. 25)— <i>contd.</i></p>	<p>“ broken, be delivered up to the marshal of the court.  “ If there is no such marshal, then  “ the aircraft shall be in like manner  “ delivered up to such person as the  “ court may appoint ” ;  and in the third paragraph thereof after the words “ The ship ” there shall be inserted the words “ or aircraft ”, and after the word “ officer ” there shall be inserted the words “ or person ”.  In section seventeen, for the first paragraph thereof there shall be substituted the following paragraph :—  “ The captors shall with all practicable speed after the ship is brought into port, or the aircraft is brought to a place within the jurisdiction of a prize court, bring the ship papers or the aircraft papers, as the case may be, into the registry of the court ” ;  in the second paragraph thereof, after the words “ capturing ship ” there shall be inserted the words “ or capturing aircraft ”, and after the words “ ship papers ”, in each place where those words occur, there shall be inserted the words “ or aircraft papers ” ;  and in the third paragraph thereof, after the words “ ship papers ” there shall be inserted the words “ or aircraft papers ”, after the words “ captured ship ” there shall be inserted the words “ or captured aircraft ”, and after the words “ capturing ship ” there shall be inserted the words “ or capturing aircraft ”.  In section thirty-one, after the word “ ships ” there shall be inserted the</p>

*Prize Act, 1939—contd.*SCHEDULE—*contd.*

## Act amended.

## Amendment.

The Naval Prize  
Act, 1864 (27 &  
28 Vict., c. 25)—  
*contd.*

words "and aircraft"; and after  
the word "ship" there shall be  
inserted the words "or aircraft".

In section forty, in the first paragraph  
thereof, after the word "ship"  
there shall be inserted the word  
"aircraft" and after the words  
"any of Her Majesty's ships of  
"war" there shall be inserted the  
words "or any of His Majesty's  
"military aircraft"; and in the  
second paragraph thereof after the  
word "ship" in each place where  
that word occurs, there shall be  
inserted the words "or aircraft",  
and after the words "as a ship of  
"war" there shall be inserted the  
words "or as a military air-  
craft".

In section forty-one, in the first para-  
graph thereof, after the word "ship"  
there shall be inserted the words  
"or aircraft", and after the  
words "any of Her Majesty's ships  
"of war" there shall be inserted  
the words "or any of His  
"Majesty's military aircraft"; for  
the second paragraph thereof there  
shall be substituted the following  
paragraph:—

"The master or owner of the ship  
"or his agent, or the pilot or owner  
"of the aircraft or his agent, may,  
"with the consent of the re-  
"captors, unload and dispose of  
"the goods on board the ship or  
"aircraft, as the case may be,  
"before adjudication";

and in the third paragraph thereof  
after the words "United Kingdom"  
there shall be inserted the words "or  
"the aircraft does not, within six  
"months, return to a place within the

*Prize Act, 1939—contd.*SCHEDULE—*contd.*

Act amended.	Amendment.
The Naval Prize Act, 1864 (27 & 28 Vict., c. 25)— <i>contd.</i>	<p>“United Kingdom,” and after the word “ship” in the second place where that word occurs there shall be inserted the word “aircraft”.</p> <p>In section forty-seven, after the word “ships” in each place where that word occurs there shall be inserted the word “aircraft” and after the words “United Kingdom” there shall be inserted the words “or brought to a place within the “United Kingdom, as the case may be”.</p> <p>After section forty-eight, there shall be inserted the following section:—</p> <p>“48A. Where any aircraft or goods taken as prize is or are brought to any place within the jurisdiction of a prize court, the pilot or other person in charge or command of the aircraft which has been taken or in which the goods are brought shall, when required by any officer of Customs, deliver an account in writing under his hand concerning such aircraft and goods, giving such particulars relating thereto as may be in his power, and shall truly answer all questions concerning such aircraft or goods asked by any such officer, and in default shall forfeit a sum not exceeding one hundred pounds, such forfeiture to be enforced as forfeitures for offences against the laws relating to the Customs are enforced; and every such aircraft shall be liable to such searches as other aircraft are liable to; and the officers of the Customs may freely go on board such aircraft and bring to the King’s warehouse any goods on</p>



*Ships and Aircraft (Transfer Restriction) Act, 1939—contd.*

Restriction  
on transac-  
tions in res-  
pect of  
aircraft  
and parts  
of aircraft.

3.—(1) It shall be unlawful, except under the sanction of the Secretary of State, to sell, transfer or let on hire (whether under charter or otherwise), or to do anything involving the creation of a charge on,—

- (a) any aircraft to which this Act applies, or
- (b) any airframe, aero-engine or airscrew which is within any country or territory to which this Act extends ;

and if any person purports to effect any transaction which is unlawful by virtue of this section, then, in addition to the transaction being void, he shall be guilty of an offence :

Provided that the provisions of this section restricting transactions in respect of airframes, aero-engines and airscrews shall not avoid, or render a person punishable in respect of, any transaction relating to an aircraft to which this Act does not apply, by reason only that any airframe forming part of the aircraft, or any aero-engine or airscrew installed therein, is within a country or territory to which this Act extends.

(2) This section shall come into operation on such date as the Secretary of State may by order appoint.

Ships and  
aircraft to  
which this  
Act applies.

4.—(1) The ships to which this Act applies are—

- (a) all British ships, except ships registered—
  - (i) in a Dominion, or
  - (ii) in any territory administered by His Majesty's Government in a Dominion, or
  - (iii) in India or Burma ; and
- (b) all other ships being ships--
  - (i) which are registered in, or licensed under the law of, any colony or British protectorate or any territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Majesty and is being exercised by His Majesty's Government in the United Kingdom, or
  - (ii) which, in pursuance of an Order in Council under section eighty-eight of the Merchant Shipping Act, 1894, are registered at any port within which His Majesty exercises jurisdiction in accordance with the Foreign Jurisdiction Act, 1890. 57 & 58 Vict., c. 80.  
53 & 54 Vict., c. 37.

*Ships and Aircraft (Transfer Restriction) Act, 1939—contd.*

(2) The aircraft to which this Act applies are—

(a) all aircraft registered—

- (i) in the United Kingdom,
- (ii) in any of the Channel Islands or in the Isle of Man,
- (iii) in Newfoundland or in any colony,
- (iv) in any British protectorate, or
- (v) in any territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Majesty and is being exercised by His Majesty's Government in the United Kingdom; and

(b) all other aircraft being aircraft which are within any of the countries and territories referred to in paragraph (a) of this subsection, and have at any time (whether before or after the commencement of this Act) been registered in any of the said countries and territories and are not for the time being either registered—

- (i) in a Dominion, or
- (ii) in any territory administered by His Majesty's Government in a Dominion, or
- (iii) in India, Burma or Southern Rhodesia, or registered in a register of any foreign State.

The reference in paragraph (a) of this subsection to any colony shall be construed as a reference to any colony except Southern Rhodesia or a colony administered by His Majesty's Government in a Dominion.

5. Where a person convicted of an offence under this Act is a body corporate, every person who, at the time of the commission of the offence, was a director or an officer of the body corporate shall be deemed to be guilty of that offence, unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of the offence.

*Offences by corporations.*

6.—(1) Any person guilty of an offence under this Act shall be liable—

*Penalties and legal proceedings.*

- (a) on conviction, on indictment to imprisonment for a term not exceeding two years or a fine or to both such imprisonment and a fine, or
- (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not

*Ships and Aircraft (Transfer Restriction) Act, 1939—concl'd.*

but nothing in this section shall be taken to restrict the operation of the provisions of this Act relating to the forfeiture of ships.

Extent of  
Act.

11.—(1) This Act extends to the following countries and territories, that is to say,—

- (a) the United Kingdom,
- (b) the Channel Islands and the Isle of Man,
- (c) Newfoundland, and any colony except Southern Rhodesia or a colony administered by His Majesty's Government in a Dominion,
- (d) any British protectorate, and
- (e) any territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Majesty and is being exercised by His Majesty's Government in the United Kingdom;

and also extends (in so far as His Majesty has jurisdiction therein) to any other country or territory being a foreign country or territory in which for the time being His Majesty has jurisdiction, and not being a country or territory administered by His Majesty's Government in a Dominion.

(2) This Act shall, in its application to any country or territory outside the United Kingdom, have effect subject to such adaptations and modifications, if any, as may be prescribed by or under an Order of His Majesty in Council; and any such Order may be varied or revoked by a subsequent Order of His Majesty in Council.

Inter-  
pretation.

12. In this Act the following expressions have the meanings hereby respectively assigned to them, that is to say :—

“ aircraft ” means any flying machine, glider or airship or any balloon (whether fixed or free);

“ Dominion ” means any Dominion within the meaning of the Statute of Westminster, 1931, except New-  
foundland, and 22 Geo. 5,  
c. 4.

“ ship ” has the same meaning as in the Merchant  
Shipping Act, 1894. 57 & 58 Vict.,  
c. 60.

Short title  
and dura-  
ti on of Act.

13.—(1) This Act may be cited as the Ships and Aircraft (Transfer Restriction) Act, 1939.

(2) This Act shall continue in force until such date as His Majesty may by Order in Council declare to be the date on which the emergency that was the occasion of the passing of this Act came to an end, and shall then expire except as respects things previously done or omitted to be done.

## THE TRADING WITH THE ENEMY ACT, 1939.

(2 AND 3 GEO. 6, CH. 89.)

## CHAPTER 89.

*An Act to impose penalties for trading with the enemy, to make provision as respects the property of enemies and enemy subjects, and for purposes connected with the matters aforesaid.*

[5th September, 1939.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

*Trading with the Enemy and matters relating thereto.*

1.—(1) Any person who trades with the enemy within the meaning of this Act shall be guilty of an offence of trading with the enemy, and shall be liable—

Penalties  
for trading  
with the  
enemy.

- (a) on conviction on indictment, to penal servitude for a term not exceeding seven years or to a fine or to both such penal servitude and a fine, or
- (b) on summary conviction, to imprisonment for a term not exceeding twelve months or to a fine not exceeding five hundred pounds, or to both such imprisonment and such fine;

and the court may in any case order that any goods or money in respect of which the offence has been committed shall be forfeited.

(2) For the purposes of this Act a person shall be deemed to have traded with the enemy—

- (a) if he has had any commercial, financial or other intercourse or dealings with, or for the benefit of, an enemy, and, in particular, but without prejudice to the generality of the foregoing provision, if he has—

- (i) supplied any goods to or for the benefit of an enemy, or obtained any goods from an

*Trading with the Enemy Act, 1939—contd.*

enemy, or traded in, or carried, any goods consigned to or from an enemy or destined for or coming from enemy territory, or

(ii) paid or transmitted any money, negotiable instrument or security for money to or for the benefit of an enemy or to a place in enemy territory, or

(iii) performed any obligation to, or discharged any obligation of, an enemy, whether the obligation was undertaken before or after the commencement of this Act, or

(b) if he has done anything which, under the following provisions of this Act, is to be treated as trading with the enemy :

Provided that a person shall not be deemed to have traded with the enemy by reason only that he has—

(i) done anything under an authority given generally or specially by, or by any person authorised in that behalf by, a Secretary of State, the Treasury or the Board of Trade, or

(ii) received payment from an enemy of a sum of money due in respect of a transaction under which all obligations on the part of the person receiving payment had been performed before the commencement of the war by reason of which the person from whom the payment was received became an enemy.

(3) Any reference in this section to an enemy shall be construed as including a reference to a person acting on behalf of an enemy.

(4) A prosecution for an offence of trading with the enemy shall not be instituted in England or Northern Ireland except by, or with the consent of, the Director of Public Prosecutions or the Attorney General for Northern Ireland, as the case may be :

Provided that this subsection shall not prevent the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of such an offence, or the remanding, in custody or on bail, of any person charged with such an offence, notwithstanding that the necessary consent to the institution of a prosecution for the offence has not been obtained.

2.—(1) Subject to the provisions of this section, the expression “ enemy ” for the purposes of this Act means—

(a) any State, or Sovereign of a State, at war with His Majesty,

*Trading with the Enemy Act, 1939—contd.*

- (b) any individual resident in enemy territory,
- (c) any body of persons (whether corporate or unincorporate) carrying on business in any place, if and so long as the body is controlled by a person who, under this section, is an enemy, or
- (d) any body of persons constituted or incorporated in, or under the laws of, a State at war with His Majesty,

but does not include any person by reason only that he is an enemy subject.

(2) The Board of Trade may by order direct that any person specified in the order shall, for the purposes of this Act, be deemed to be, while so specified, an enemy.

3.—(1) The Board of Trade, if they think it expedient for securing compliance with section one of this Act so to do, may by written order authorise a specified person (hereafter in this section referred to as “an inspector”) to inspect any books or documents belonging to, or under the control of, a person named in the order, and to require that person and any other person to give such information in his possession with respect to any business carried on by the named person as the inspector may demand, and for the purposes aforesaid to enter on any premises used for the purposes of that business.

Inspection  
and super-  
vision of  
business.

(2) If, on a report made by an inspector as respects any business, it appears to the Board of Trade that it is expedient, for securing compliance with section one of this Act, that the business should be subject to supervision, the Board may appoint a person (hereafter in this section referred to as “a supervisor”) to supervise the business, with such powers as the Board may determine.

(3) If any person, without reasonable cause, fails to produce for inspection, or furnish, to an inspector or a supervisor any document or information which he is duly requested by the inspector or supervisor so to produce or furnish, that person shall be liable, on summary conviction, to a fine not exceeding fifty pounds or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.

(4) If any person, with intent to evade the provisions of this section, destroys, mutilates or defaces any book or other document which an inspector or a supervisor is

*Trading with the Enemy Act, 1939—contd.*

or may be authorised under this section to inspect, that person shall be liable—

- (a) on conviction on indictment, to penal servitude for a term not exceeding five years or to a fine or to both such penal servitude and a fine, or
- (b) on summary conviction, to imprisonment for a term not exceeding twelve months or to a fine not exceeding one hundred pounds or to both such imprisonment and such fine.

Transfer of negotiable instruments and choses in action by enemies.

4.—(1) No assignment of a chose in action made by or on behalf of an enemy shall, except with the sanction of the Treasury, be effective so as to confer on any person any rights or remedies in respect of the chose in action; and neither a transfer of a negotiable instrument by or on behalf of an enemy, nor any subsequent transfer thereof, shall, except with the sanction of the Treasury, be effective so as to confer any rights or remedies against any party to the instrument.

(2) The preceding subsection shall apply in relation to any transfer of any coupon or other security transferable by delivery, not being a negotiable instrument, as it applies in relation to any assignment of a chose in action.

(3) If any person by payment or otherwise purports to discharge any liability from which he is relieved by this section, knowing the facts by virtue of which he is so relieved, he shall be deemed to have thereby traded with the enemy:

Provided that in any proceedings for an offence of trading with the enemy which are taken by virtue of this subsection it shall be a defence for the defendant to prove that at the time when he purported to discharge the liability in question he had reasonable grounds for believing that the liability was enforceable against him by order of a competent court, not being either a court having jurisdiction in the United Kingdom or a court of a State at war with His Majesty, and would be enforced against him by such an order.

(4) Where a claim in respect of a negotiable instrument or chose in action is made against any person who has reasonable cause to believe that, if he satisfied the claim, he would be thereby committing an offence of trading with the enemy, that person may pay into the High Court or Court of Session any sum which, but for the provisions of subsection (1) of this section, would be due in respect of the claim, and thereupon that sum shall, subject to rules of court, be dealt with according to any order of the court, and the payment shall for all purposes be a good discharge to that person.

*Trading with the Enemy Act, 1939—contd.*

(5) Nothing in this section shall apply to securities to which the next following section applies.

## 5.—(1) If—

Transfer  
and  
allotment  
of securities.

(a) any securities to which this section applies are transferred by or on behalf of an enemy, or

(b) any such securities, being securities issued by a company within the meaning of the Companies Act, 1929, or any corresponding enactment in force in Northern Ireland, are allotted or transferred to, or for the benefit of, an enemy subject without the consent of the Board of Trade,

19 & 20  
Geo. 5, c. 23.

then, except with the sanction of the Board of Trade, the transferee or allottee shall not, by virtue of the transfer or allotment, have any rights or remedies in respect of the securities; and no body corporate by whom the securities were issued or are managed shall take any cognisance of, or otherwise act upon, any such transfer except under the authority of the Board.

(2) No share warrants, stock certificates or bonds, being warrants, certificates or bonds payable to bearer, shall be issued in respect of any securities to which this section applies, being securities registered or inscribed in the name of an enemy or of a person acting on behalf of, or for the benefit of, an enemy.

(3) Any person who contravenes the provisions of this section shall be liable, on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding one hundred pounds or to both such imprisonment and such fine.

(4) This section applies to the following securities, that is to say, annuities, stock, shares, bonds, debentures or debenture stock registered or inscribed in any register, branch register or other book kept in the United Kingdom.

6.—(1) Purchasing enemy currency shall be treated as trading with the enemy.

Purchase  
of enemy  
currency.

(2) In this section the expression "enemy currency" means any such notes or coins as circulate as currency in any area under the sovereignty of a Power with whom His Majesty is at war, not being an area in the occupation of His Majesty or of a Power allied with His Majesty, or any such other notes or coins as are for the time being declared by an order of the Treasury to be enemy currency.



*Trading with the Enemy Act, 1939—contd.**Property of Enemies and Enemy Subjects.*

Collection  
of enemy  
debts and  
custody of  
enemy  
property.

7.—(1) With a view to preventing the payment of money to enemies and of preserving enemy property in contemplation of arrangements to be made at the conclusion of peace, the Board of Trade may appoint custodians of enemy property for England, Scotland and Northern Ireland respectively, and may by order—

- (a) require the payment to the prescribed custodian of money which would, but for the existence of a state of war, be payable to or for the benefit of a person who is an enemy, or which would, but for the provisions of section four or section five of this Act, be payable to any other person ;
- (b) vest in the prescribed custodian such enemy property as may be prescribed, or provide for, and regulate, the vesting in that custodian of such enemy property as may be prescribed ;
- (c) vest in the prescribed custodian the right to transfer such other enemy property as may be prescribed, being enemy property which has not been, and is not required by the order to be, vested in the custodian ;
- (d) confer and impose on the custodians and on any other person such rights, powers, duties and liabilities as may be prescribed as respects—
  - (i) property which has been, or is required to be, vested in a custodian by or under the order,
  - (ii) property of which the right of transfer has been, or is required to be, so vested,
  - (iii) any other enemy property which has not been, and is not required to be, so vested or
  - (iv) money which has been, or is by the order required to be, paid to a custodian ;
- (e) require the payment of the prescribed fees to the custodians in respect of such matters as may be prescribed and regulate the collection of and accounting for such fees ;
- (f) require any person to furnish to the custodian such returns, accounts, and other information and to produce such documents, as the custodian considers necessary for the discharge of his functions under the order ;

*Trading with the Enemy Act, 1939—contd.*

and any such order may contain such incidental and supplementary provisions as appear to the Board of Trade to be necessary or expedient for the purposes of the order.

(2) Where any requirement or direction with respect to any money or property is addressed to any person by a custodian and accompanied by a certificate of the custodian that the money or property is money or property to which an order under this section applies, the certificate shall be evidence of the facts stated therein, and if that person complies with the requirement or direction, he shall not be liable to any action or other legal proceeding by reason only of such compliance.

(3) Where, in pursuance of an order made under this section,—

- (a) any money is paid to a custodian,
- (b) any property, or the right to transfer any property, is vested in a custodian, or
- (c) a direction is given to any person by a custodian in relation to any property which appears to the custodian to be property to which the order applies,

neither the payment, vesting or direction nor any proceedings in consequence thereof shall be invalidated or affected by reason only that at a material time—

- (i) some person who was or might have been interested in the money or property, and who was an enemy or an enemy subject, had died or had ceased to be an enemy or an enemy subject, or
- (ii) some person who was so interested, and who was believed by the custodian to be an enemy or an enemy subject, was not an enemy or an enemy subject.

(4) Any order under this section shall have effect notwithstanding anything in any Act passed before this Act.

(5) If any person pays any debt, or deals with any property, to which any order under this section applies, otherwise than in accordance with the provisions of the order, he shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding one hundred pounds or to both such imprisonment and such fine; and the payment or dealing shall be void.

(6) If any person, without reasonable cause, fails to produce or furnish, in accordance with the requirements of an order under this section, any document or information which he is required under the order to produce or

*Trading with the Enemy Act, 1939—contd.*

furnish, he shall be liable on summary conviction to a fine not exceeding ten pounds for every day on which the default continues.

(7) All fees received by any custodian by virtue of an order under this section shall be paid into the Exchequer of the United Kingdom.

(8) In this section—

- (a) the expression “enemy property” means any property for the time being belonging to or held or managed on behalf of an enemy or an enemy subject;
- (b) the expression “property” means real or personal property, and includes any estate or interest in real or personal property, any negotiable instrument, debt or other chose in action, and any other right or interest, whether in possession or not; and
- (c) the expression “prescribed” means prescribed by an order made under this section.

*General and Supplementary Provisions.*

Provisions  
with respect  
to money  
payable to,  
or received  
by, a  
Clearing  
Office  
under  
24 & 25  
Geo. 5, c. 31.

8.—(1) Nothing in this Act shall affect the operation of section one of the Debts Clearing Offices and Import Restrictions Act, 1934, or of any order under that section, in so far as the said section or order relates to the payment to, and collection by, a Clearing Office of debts to which such an order applies; but—

- (a) notwithstanding anything in subsection (6) of the said section or in any such order as aforesaid, any sum received by a Clearing Office by virtue of such an order, being—
  - (i) a sum which is so received at a time when the Sovereign Power of the country with respect to which the order has been made is at war with His Majesty, or
  - (ii) a sum which has been so received before the commencement of the war between that Power and His Majesty and has not, before the commencement of that war, ceased to be in the possession or under the control of the Clearing Office,

shall be retained by the Clearing Office, subject to any order which may be made under this Act requiring the Clearing Office to pay

*Trading with the Enemy Act, 1939—contd.*

that sum to a custodian of enemy property, and subject to the provisions of subsections (4) and (6) of the said section with respect to overpayments made to the Clearing Office; and

- (b) any sum which a Clearing Office is required by paragraph (a) of this subsection to retain subject as aforesaid, shall, except in so far as it represents an overpayment made to the Clearing Office, be deemed for the purposes of this Act to be money which would, but for the existence of a state of war, be payable to or for the benefit of a person who is an enemy.

(2) There may be retained by a Clearing Office out of any sum which, by virtue of any order under this Act, is payable by that office to a custodian of enemy property such reasonable commission, not exceeding two per cent. of that sum, as the Treasury think fit; and the amount of any commission so retained by a Clearing Office shall be paid into the Exchequer of the United Kingdom.

9.—(1) If any person, for the purpose of obtaining any authority or sanction under this Act, or in giving any information for the purposes of this Act or of any order made thereunder, knowingly or recklessly makes a statement which is false in a material particular, he shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding one hundred pounds or to both such imprisonment and such fine.

False  
statements  
and  
obstruction.

(2) Every person who wilfully obstructs any person in the exercise of any powers conferred on him by or under this Act shall be liable on summary conviction to a fine not exceeding fifty pounds.

10. Where any offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary, or other officer of the body corporate, he, as well as the body corporate, shall be deemed to be guilty of that offence, and shall be liable to be proceeded against and punished accordingly.

Offences by  
corporations.

11.—(1) The expenses incurred for the purposes of this Act by the Board of Trade shall be defrayed out of moneys provided by Parliament.

Expenses  
of, and  
exercise of  
powers by,  
Board of  
Trade.

(2) Anything required or authorised under this Act to be done by, to or before the Board of Trade may be done by, to or before the President of the Board, any secretary,

*Trading with the Enemy Act, 1939—contd.*

undersecretary or assistant secretary of the Board, or any person authorised in that behalf by the President of the Board.

Evidence of authority or sanction of Secretary of State, Treasury or Board of Trade.

12. Any document stating that any authority or sanction is given under any of the provisions of this Act by a Secretary of State, the Treasury or the Board of Trade, and purporting to be signed on behalf of the Secretary of State, the Treasury or the Board of Trade, or by a person who is empowered by this Act to do anything which may be done thereunder by the Board, shall be evidence of the facts stated in the document.

Application to Scotland.

13. In the application of this Act to Scotland, "chase in action" means "right of action or incorporeal moveable", "defendant" means "person accused", and "real or personal property" means "heritable or moveable property".

Extension of Act to colonies, etc.

14. His Majesty may by Order in Council direct that the provisions of this Act other than this section shall extend, with such exceptions, adaptations and modifications, if any, as may be prescribed by or under the Order—

- (a) to the Isle of Man or any of the Channel Islands,
- (b) to Newfoundland or any colony,
- (c) to any British protectorate,
- (d) to any territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Majesty, and is being exercised by His Majesty's Government in the United Kingdom, and
- (e) (to the extent of His Majesty's jurisdiction therein) to any other country or territory being a foreign country or territory in which for the time being His Majesty has jurisdiction.

Interpretation.

15.—(1) In this Act the following expressions have the meanings hereby respectively assigned to them :—

"enemy subject" means—

- (a) an individual who, not being either a British subject or a British protected person, possesses the nationality of a State at war with His Majesty, or
- (b) a body of persons constituted or incorporated in, or under the laws of, any such State; and

*Trading with the Enemy Act, 1939—contd.*

“enemy territory” means any area which is under the sovereignty of, or in the occupation of, a Power with whom His Majesty is at war, not being an area in the occupation of His Majesty or of a Power allied with His Majesty.

(2) A certificate of a Secretary of State that any area is or was under the sovereignty of, or in the occupation of any Power, or as to the time at which any area became or ceased to be under such sovereignty or in such occupation shall, for the purposes of any proceedings under or arising out of this Act, be conclusive evidence of the facts stated in the certificate.

(3) In considering for the purposes of any of the provisions of this Act whether any person has been an enemy or an enemy subject, no account shall be taken of any state of affairs existing before the commencement of this Act.

(4) For the purposes of this Act, a person shall be deemed to be a director of a body corporate if he occupies in relation thereto the position of a director, by whatever name called; and, for the purposes of the provisions of this Act relating to offences by bodies corporate, a person shall be deemed to be a director of a body corporate if he is a person in accordance with whose directions or instructions the directors of that body act:

Provided that a person shall not, by reason only that the directors of a body corporate act on advice given by him in a professional capacity, be taken to be a person in accordance with whose directions or instructions those directors act.

(5) Any power conferred by the preceding provisions of this Act to make an Order in Council or an order shall be construed as including a power, exercisable in the like manner, to vary or revoke the Order in Council or order.

16. This Act shall be without prejudice to the exercise of any right or prerogative of the Crown.

Saving of rights of Crown.

17.—(1) This Act may be cited as the Trading with the Enemy Act, 1939.

Short title, commencement and repeal.

(2) This Act shall, if His Majesty by Order in Council so directs, be deemed to have come into operation on such day as may be specified in the Order:

*Trading with the Enemy Act, 1939—concl'd.*

Provided that a person shall not, by virtue of an Order in Council under this subsection, be liable to any penalty in respect of anything done by him before the date of the passing of this Act which was not unlawful at common law.

(3) The enactments mentioned in the first and second columns of the Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule :

Provided that (without prejudice to the operation of subsection (2) of section thirty-eight of the Interpretation Act, 1889) the repeal of the said enactments by this subsection shall not affect the operation of any Order in Council or rules made under section five of the Trading with the Enemy Amendment Act, 1914, and shall not be taken to affect the operation of those enactments as applied or amended by any Order in Council made under the Treaty of Peace Act, 1919, the Treaty of Peace (Austria and Bulgaria) Act, 1920, the Treaty of Peace (Hungary) Act, 1921, or the Treaty of Peace (Turkey) Act, 1924.

52 & 53 Vict.,  
c. 63.

5 & 6 Geo. 5,  
c. 12.

9 & 10  
Geo. 5, c. 33.  
10 & 11  
Geo. 5, c. 6.  
11 & 12  
Geo. 5, c. 11.  
14 & 15  
Geo. 5, c. 7.

## SCHEDULE.

Section 17

## ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
4 & 5 Geo. 5, c. 87.	The Trading with the Enemy Act, 1914	The whole Act.
5 & 6 Geo. 5, c. 12.	The Trading with the Enemy Amendment Act, 1914.	The whole Act.
5 & 6 Geo. 5, c. 79.	The Trading with the Enemy Amendment Act, 1915.	The whole Act.
5 & 6 Geo. 5, c. 98.	The Trading with the Enemy (Extension of Powers) Act, 1915.	The whole Act.
5 & 6 Geo. 5, c. 105.	The Trading with the Enemy Amendment Act, 1916.	The whole Act.
6 & 7 Geo. 5, c. 32.	The Trading with the Enemy (Copyright) Act, 1916.	The whole Act.
6 & 7 Geo. 5, c. 52.	The Trading with the Enemy and Export of Prohibited Goods Act, 1916.	In section one the words "from "any licence" to "obtaining" when it secondly occurs; section two.
8 & 9 Geo. 5, c. 31.	The Trading with the Enemy (Amendment) Act, 1918.	The whole Act.

# THE PATENTS, DESIGNS, COPYRIGHT AND TRADE MARKS (EMERGENCY) ACT, 1939.

(2 & 3 GEO. 6, CH. 107.)

## CHAPTER 107.

*An Act to make such special provision with respect to patents, registered designs, copyright and trade marks, as is expedient to meet any emergency which may arise as a result of war.*

[ 21st September, 1939.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1.—(1) Notwithstanding the provisions of section one of the <sup>1</sup>Trading with the Enemy Act, 1939, or any rule of law relating to intercourse or dealings with or for the benefit of enemies, a licence under a patent or for the application of a registered design or granting an interest in a copyright, being a licence which would have been in force in favour of a person resident in the United Kingdom or the Isle of Man if neither the proprietor of the patent or registered design, or the owner of the copyright, as the case may be, nor any person otherwise interested therein, had been an enemy, shall not be invalid by reason of the fact that the proprietor or owner or any person otherwise interested therein is an enemy, nor shall any contract, in so far as it relates to any such licence as aforesaid, be invalid by reason of the fact that any party to the contract is an enemy :

Provisions as to existing licences under patents, designs and copyright of enemies and enemy subjects, and as to contracts relating thereto.

Provided that nothing in this section shall—

- (a) render valid a grant or an assignment of any such licence as aforesaid, or any contract relating to any such licence, if that grant, assignment or contract is made during the existence of a state of war and is unlawful by virtue of any provision of the said section one or of any such rule as aforesaid, or

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<sup>1</sup> *Supra*, p. 23.



*Patents, Designs, Copyright and Trade Marks (Emergency) Act, 1939—contd.*

- (b) authorise the performance of any contract relating to any such licence as aforesaid in a manner inconsistent with any of the provisions of the <sup>1</sup>Trading with the Enemy Act, 1939, or of any other enactment relating to intercourse or dealings with or for the benefit of enemies, or to the property, rights, or capacity of enemies, or in a manner inconsistent with any rule of law relating to any of those matters. 2 & 3 Geo. 6,  
c. 89.

(2) In the case of any such licence as aforesaid, where an enemy or an enemy subject is, or has at any time since the beginning of the third day of September nineteen hundred and thirty-nine been, whether alone or jointly with any other person, the proprietor of the patent or registered design, or the owner of the copyright, as the case may be, or entitled to any other interest therein (not being merely the interest of a licensee), the comptroller may, on the application of the licensee or any other person interested in the patent, registered design or copyright, by order—

- (a) revoke the licence ;
- (b) revoke or vary any conditions subject to which the licence has effect ; or
- (c) revoke or vary any of the provisions of a contract relating to the licence in so far as they relate thereto.

An order for a variation made under this subsection may be revoked or varied by a subsequent order made thereunder.

2.—(1) Where—

- (a) an enemy or an enemy subject is, or has at any time since the beginning of the third day of September nineteen hundred and thirty-nine been, whether alone or jointly with any other person, the proprietor of a patent or registered design or the owner of a copyright, or entitled to any other interest in a patent, registered design or copyright (not being merely the interest of a licensee), and
- (b) the comptroller is satisfied that it is in the interest of all or any of His Majesty's subjects that the rights conferred by the patent should be exercised, or that the design should be applied or

Power of  
comptroller  
to grant  
licences  
under  
patents,  
designs or  
copyright  
of enemies  
and enemy  
subjects.

<sup>1</sup> *Supra*, p. 23.

*Patents, Designs, Copyright and Trade Marks (Emergency)  
Act, 1939—contd.*

the copyright exercised, as the case may be, and that a person who is not an enemy or an enemy subject desires to exercise the said rights or apply the said design or exercise the said copyright and is in a position so to do,

the comptroller may, on the application of that person, make an order granting to him a licence under the patent or for the application of the design or granting an interest in the copyright, as the case may be, either for the whole of the residue of the term of the patent, registration or copyright, or for such less period as the comptroller thinks fit.

(2) The power of the comptroller under this section to make an order granting a licence shall include the power—

(a) to make an order granting an exclusive licence ;

(b) to make an order granting a licence in relation to a patent, registered design, or copyright, notwithstanding that a licence, whether exclusive or otherwise (not being an exclusive licence granted by virtue of the powers conferred by this section), is in force in relation thereto ; and

(c) to make an order granting a licence on any terms that the comptroller may think expedient.

(3) Where, under the power conferred by this section, the comptroller makes an order granting a licence in relation to a patent, registered design, or copyright in relation to which any other licence has been granted otherwise than by an order made under this section, the comptroller may, in relation to that other licence, make any order which the comptroller would have had power to make on an application under sub-section (2) of the last foregoing section, and which appears to him to be expedient having regard to the order made under this section.

(4) An order granting a licence under this section shall, without prejudice to any other method of enforcement, operate as if it were embodied in a deed granting the licence which the patentee, the proprietor of the registered design, or the owner of the copyright, as the case may be, and all other parties having any interest therein, had executed with full capacity so to do, and the order shall accordingly operate to take away from any such party any right in

*Patents, Designs, Copyright and Trade Marks (Emergency) Act, 1939—contd.*

relation thereto the exercise whereof would be inconsistent with the exercise of the licence in accordance with and subject to the terms on which it is granted.

(5) A licensee under a licence granted under this section may institute proceedings for infringement in his own name as though he were the patentee, the proprietor of the registered design or the owner of the copyright, as the case may be, so, however, that any person other than an enemy who, whether alone or jointly with any other person, is the patentee, the registered proprietor of the registered design, or the owner of the copyright, as the case may be, shall, unless the court in which the proceedings are taken thinks fit to direct otherwise, be made a party to the proceedings, either—

- (a) if he consents in writing thereto, as a plaintiff,  
or
- (b) if he does not so consent, as a defendant.

Where any person is made defendant to any proceedings by virtue of this sub-section, he shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

(6) An order granting a licence under this section shall give directions as to the person to whom or the manner in which the licensee is to pay or deal with any royalties or other payments to be paid in respect of the licence. In framing any such directions, the comptroller shall have regard to the purposes of any relevant order for the time being in force under the <sup>1</sup>Trading with the Enemy Act, 1939; but any directions given by him under this sub-section shall, in so far as they may be inconsistent with the provisions of any such order, have effect to the exclusion of those provisions.

<sup>2 & 3 Geo. 6,  
c. 89.</sup>

(7) An order under this section and a licence granted by such an order may be varied by a subsequent order made by the comptroller either—

- (a) where the licensee makes application to the comptroller for the variation thereof, or
- (b) where the comptroller is of opinion that circumstances have arisen which make it just and equitable, or that the public interest requires, that it should be varied.

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<sup>1</sup> *Statute*, p. 23.

*Patents, Designs, Copyright and Trade Marks (Emergency) Act, 1939—contd.*

(8) An order under this section and a licence granted by such an order may be revoked by a subsequent order made by the comptroller in any of the following cases, that is to say:—

- (a) where the licensee makes application to the comptroller for the revocation thereof;
- (b) where it appears to the comptroller that it was obtained by any misrepresentation, whether intentional or not, or was made or granted without the comptroller's having full knowledge of the material facts;
- (c) where the licensee has failed to comply with any term on which the licence was granted or with a direction given under sub-section (6) of this section, or has failed to exercise the licence in such a manner as to satisfy the reasonable requirements of the public in relation to the invention, registered design or work in which copyright subsists, as the case may be, or has charged unreasonable or excessive prices in respect of anything made or done in the exercise of the licence; or
- (d) where the comptroller is of opinion that circumstances have arisen which make it just and equitable, or that the public interest requires, that it should be revoked.

3.—(1) Where it is made to appear to the comptroller that it is difficult or impracticable to describe or refer to an article or substance without the use of a trade mark registered in respect of that article or substance, being a trade mark which is, or has at any time since the beginning of the third day of September nineteen hundred and thirty-nine been, registered in the name of an enemy or an enemy subject, whether alone or jointly with another, or which is, or has at any such time as aforesaid been, in the proprietorship of an enemy or an enemy subject, whether alone or jointly with another, the following provisions of this section shall have effect.

Power of  
comptroller  
to suspend  
trade mark  
rights of an  
enemy or  
an enemy  
subject.

(2) On the application of any person who proposes to deal in the course of trade in the United Kingdom or the Isle of Man with an article or substance which is or is intended to be the same as, or equivalent to or a substitute

*Patents, Designs, Copyright and Trade Marks (Emergency) Act, 1939—contd.*

for, the article or substance in respect of which the trade mark is registered, the comptroller may order that the right to the use of the trade mark given by the registration thereof shall be suspended—

- (a) so far as regards use thereof by the applicant and any such use thereof by any other person in relation to goods connected in the course of trade with the applicant as would not be an infringement of the said right if the applicant were the proprietor of the trade mark,
- (b) to such extent and for such period as the comptroller may consider necessary for enabling the applicant to render well-known and established some description of, or means of reference to, the article or substance with which he proposes to deal in the course of trade, being a description or means of reference which does not involve the use of the trade mark.

(3) Where an order has been made under the last foregoing sub-section, no action for passing off shall lie on the part of any person interested in the trade mark in respect of any use thereof which, by virtue of the order, is not an infringement of the right to the use thereof given by the registration thereof.

(4) An order under this section may be varied or revoked by a subsequent order made by the comptroller.

Effect of war  
on grant  
of patents  
and  
registration  
of designs  
and trade  
marks.

4.—(1) Notwithstanding the provisions of section one <sup>2 & 3 Geo. 6, c. 80.</sup> of the <sup>1</sup>Trading with the Enemy Act, 1939, or any rule of law relating to intercourse or dealings with or for the benefit of enemies, it shall be lawful, subject to the provisions of this Act,—

- (a) for a patent to be granted under the Patents and Designs Act, 1907 ;
- (b) for a design to be registered under that Act ; or
- (c) for a trade mark to be registered under the Trade <sup>1 & 2 Geo. 6, c. 22.</sup> Marks Act, 1938,

on the application of an enemy :

Provided that, where such a grant or registration as aforesaid is effected on the application of an enemy,—

- (i) the grantee or person registered shall not be entitled to require the delivery of the patent or the grant

*Patents, Designs, Copyright and Trade Marks (Emergency) Act, 1939—contd.*

or issue of the certificate of registration, as the case may be ; and

- (ii) the patent, or the rights conferred by the registration, as the case may be, shall be subject to any relevant provisions of any enactment for the time being in force relating to the property of an enemy.

(2) A declaration made by His Majesty under section ninety-one A of the Patents and Designs Act, 1907, declaring a country to be a Convention country, shall not cease to have effect for the purposes of section ninety-one of that Act by reason that His Majesty is at war with that country.

(3) The comptroller may, in any case in which in his opinion it is desirable in the public interest so to do, refuse to take, or suspend the taking of, any proceedings on or in relation to an application of an enemy for a patent or for the registration of a design or of a trade mark.

(4) No act requisite for enabling such a grant or registration as aforesaid to be effected, in so far as it is done for that purpose and for that purpose only, shall, whether the grant or registration is effected or not, be treated as a contravention of any of the provisions of section one of the <sup>1</sup>Trading with the Enemy Act, 1939, or of any rule of law relating to intercourse or dealings with or for the benefit of enemies.

(5) References in this section to an application of an enemy shall be construed as including references to an application of an enemy jointly with any other person, whether an enemy or not, and, in the case of an application for a patent, to an application made in respect of an invention communicated by an enemy.

5.—(1) When His Majesty is at war with a country in respect of which there was in force immediately before the commencement of the war an Order in Council made by His Majesty under section twenty-nine of the Copyright Act, 1911, then, unless and until the Order in Council is revoked under that Act, it shall be deemed for the purposes of that Act to continue in force, notwithstanding the state of war, subject to any alteration or variation thereof under that Act.

Effect of war on international arrangements as to copyright.

*Patents, Designs, Copyright and Trade Marks (Emergency) Act, 1939—contd.*

(2) Notwithstanding the provisions of section one of the <sup>1</sup>Trading with the Enemy Act, 1939, or any rule of <sup>2 & 3 Geo. 5, c. 89.</sup> law relating to intercourse or dealings with or for the benefit of enemies, any copyright that would have subsisted under the Copyright Act, 1911, by virtue of such an Order in Council as aforesaid if the owner of the copyright had not been an enemy shall so subsist where an enemy is, whether alone or jointly with any other person, the owner thereof: <sup>1 & 2 Geo. 5, c. 89.</sup>

Provided that, where an enemy, whether alone or jointly with any other person, is the owner of copyright subsisting under the Copyright Act, 1911, the provisions of the Trading with the Enemy Act, 1939, and of any other enactment <sup>1 & 2, Geo. 5, c. 46.</sup> relating to intercourse or dealings with or for the benefit of enemies, or to the property, rights, or capacity of enemies, and any rule of law relating to any of those matters, shall, as respects that enemy, have effect in relation to the copyright so subsisting. <sup>2 & 3 Geo. 5, c. 89.</sup>

Power of  
comptroller  
to extend  
time limits  
having  
regard to  
war cir-  
cumstances.

6.—(1) The comptroller may, subject to such conditions, if any, as he thinks fit to impose, extend the time limited by or under the Patents and Designs Act, 1907, the Trade Marks Act, 1938, or this Act, for doing any act, <sup>1 & 2 Geo. 5, c. 22.</sup> where he is satisfied—

(a) that the doing of the act within the time so limited was prevented by a person's being on active service or by any other circumstances arising from the existence of a state of war which, in the opinion of the comptroller, justify an extension of the time so limited, or

(b) that by reason of circumstances arising from the existence of a state of war, the doing of the act within the time so limited would have been or would be injurious to the rights or interests of the person by or on whose behalf the act is or was to be done or to the public interest.

(2) An extension under this section of the time for doing any act—

(a) may be for any period that the comptroller thinks fit, notwithstanding that by or under any enactment in the said Acts power is conferred to extend the time for doing that act for a specified period only; and

*Patents, Designs, Copyright and Trade Marks (Emergency) Act, 1939—contd.*

- (b) may be granted notwithstanding that that time expired before any application or request for extension was made, or that, by reason of that act not having been done within that time, the relevant application, patent, registration or proceeding has ceased or expired or become void or invalid, or been treated as abandoned.

(3) The powers conferred by this section may be exercised notwithstanding that the exercise thereof benefits, whether directly or indirectly, an enemy or an enemy subject.

7.—(1) For the purposes of this Act—

- (a) the fact that the address of any person registered in any register kept under the Patents and Designs Act, 1907, or in the register of trade marks kept under the Trade Marks Act, 1938, is an address in enemy territory within the meaning of the <sup>1</sup>Trading with the Enemy Act, 1939, shall be *prima facie* evidence that that person is resident in that territory, and

Evidence relating to nationality and place of residence, and descriptions relating to enemy character.

- (b) the fact that in any such register a person is stated to be of a particular nationality shall be *prima facie* evidence that he is of that nationality.

(2) No order made by the comptroller under this Act shall be held to be invalid by reason only that any decision made for the purposes of the order that a particular person is an enemy or an enemy subject is wrong.

8. Before deciding as to the making of any order under this Act, the comptroller shall, unless having regard to the circumstances he considers it inexpedient or impossible so to do, give to any person who appears to the comptroller to be interested such opportunity of being heard as appears to him to be just.

Persons to be heard before making of orders.

9.—(1) The Board of Trade may make rules for regulating the practice under this Act, including rules providing for oppositions and rules regulating the service of documents and the time within which any act authorised or required by this Act or the rules may or must be done.

Rules and fees.

(2) There shall be paid in respect of applications and other matters under this Act such fees as may be prescribed by the Board of Trade with the sanction of the Treasury.

<sup>1</sup> 1 & 2 Geo. 6, c. 22.

<sup>2</sup> 1 & 2 Geo. 6, c. 89.



*Patents, Designs, Copyright and Trade Marks (Emergency) Act, 1939—concl'd.—The Emergency Powers (Defence) Act, 1940.*

Inter-  
pre-  
tation.

10.—(1) In this Act, unless the context otherwise requires,—

“enemy” and “enemy subject” have the meanings respectively assigned to them by the <sup>1</sup>Trading with the Enemy Act, 1939;

<sup>2</sup> & 3, Geo. 6,  
c. 89.

“the comptroller” means the Comptroller-General of Patents, Designs and Trade Marks, and, in relation to trade marks, means the said Comptroller-General in his capacity as the Registrar within the meaning of the Trade Marks Act, 1938;

<sup>1</sup> & 2 Geo. 6,  
c. 22.

“copyright” has the meaning assigned to it by the Copyright Act, 1911;

<sup>1</sup> & 2 Geo. 5,  
c. 40.

“design”, “invention”, “patent” and “patentee” have the meanings assigned to them respectively by the Patents and Designs Act, 1907.

(2) Where a patent has been granted to any person in respect of an invention communicated to him by some other person, that other person shall, for the purposes of this Act, be deemed to have an interest in the patent unless the contrary is proved.

(3) References in this Act to any enactment shall be construed as references to that enactment as amended by any subsequent enactment, including, except where the context otherwise requires, this Act.

Short title,  
commence-  
ment and  
extent.

11.—(1) This Act may be cited as the Patents, Designs, Copyright and Trade Marks (Emergency) Act, 1939.

(2) This Act shall be deemed to have come into operation on the third day of September nineteen hundred and thirty-nine.

(3) This Act shall extend to the Isle of Man.

(4) It is hereby declared that this Act extends to Northern Ireland.

## THE EMERGENCY POWERS (DEFENCE) ACT, 1940. (3 & 4 GEO. 6, CH. 20.)

### CHAPTER 20.

*An Act to extend the powers which may be exercised by His Majesty under the Emergency Powers (Defence) Act, 1939.*

[ 22nd May, 1940.]

WHEREAS by the <sup>2</sup>Emergency Powers (Defence) Act, 1939, His Majesty was enabled to exercise certain powers

<sup>2</sup> & 3 Geo. 6,  
c. 62.

<sup>1</sup> *Supra*, p. 23.

<sup>2</sup> *Supra*, p. 1.

*The Emergency Powers (Defence) Act, 1940—contd.*

for the purpose of meeting the emergency existing at the date of the passing of that Act :

And whereas by reason of the development of hostilities since that date it has become necessary to extend the said powers in order to secure that the whole resources of the community may be rendered immediately available when required for purposes connected with the defence of the Realm :

Now therefore be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1.—(1) The powers conferred on His Majesty by the <sup>Extension of</sup> <sup>powers under</sup> <sup>2 & 3 Geo. 6;</sup> <sup>c. 62.</sup> Emergency Powers (Defence) Act, 1939 (hereinafter referred to as the “principal Act”), shall, notwithstanding anything in that Act, include power by Order in Council to make such Defence Regulations making provision for requiring persons to place themselves, their services, and their property at the disposal of His Majesty, as appear to him to be necessary or expedient for securing the public safety, the defence of the Realm, the maintenance of public order, or the efficient prosecution of any war in which His Majesty may be engaged, or for maintaining supplies or services essential to the life of the community.

(2) In paragraph (d) of sub-section (2) of section one of the principal Act and in sub-section (4) of that section the expression “enactment” shall mean any enactment passed before the commencement of this Act.

(3) Sub-section (1) of section eleven of the principal Act (which relates to the duration of that Act) shall have effect as if for the words “one year”, where those words first occur, there were substituted the words “two years”.

2. This Act may be cited as the Emergency Powers (Defence) Act, 1940, and this Act and the <sup>Short title</sup> <sup>and citation.</sup> <sup>1</sup>Emergency Powers (Defence) Act, 1939, may be cited together as the Emergency Powers (Defence) Acts, 1939 and 1940.

2 & 3 Geo. 6,  
c. 62.

## THE TREACHERY ACT, 1940.

(3 &amp; 4 GEO. 6, CH. 21.)

## CHAPTER 21.

*An Act to make further provision for the trial and punishment of treachery.*

[ 23rd May, 1940.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Death penalty  
for treachery.

1.—If, with intent to help the enemy, any person does, or attempts or conspires with any other person to do, any act which is designed or likely to give assistance to the naval, military or air operations of the enemy, to impede such operations of His Majesty's forces, or to endanger life, he shall be guilty of felony and shall on conviction suffer death.

Prosecution,  
trial and  
punishment of  
offences.

2.—(1) Subject as hereinafter provided, persons charged with offences against this Act shall be prosecuted upon indictment, and if convicted shall be dealt with in like manner as persons convicted on indictment of murder :

Provided that—

- (a) the provisions of the Naval Discipline Act, the <sup>20 & 30 Vict.,</sup> Army Act, and the Air Force Act, relating to <sup>c. 109.</sup> offences punishable by ordinary law shall, in <sup>44 & 45 Vict.,</sup> relation to persons subject to those Acts, apply <sup>c. 58.</sup> to offences against this Act, and the provisions of those Acts specified in the first column of the Schedule to this Act shall have effect subject to the amendments specified in the second column of that Schedule :
- (b) any enemy alien may, if the Attorney-General so directs, be prosecuted for an offence against this Act before a court martial, and upon such a direction being given with respect to an enemy alien the Army Act shall apply for the purpose of his custody, trial, sentence, and punishment as if he were, and had been at the time when the offence is alleged to have been committed, a person subject to military law :

*Treachery Act, 1940—contd.*

- (c) if upon representations made to him, it appears to the Secretary of State that any person sentenced to death after being convicted on indictment of an offence against this Act was, at the time of the commission of the offence, a member of the armed forces of the Crown or of the armed forces of any foreign power, including an enemy power, the Secretary of State may direct that, instead of being dealt with in like manner as a person sentenced to death after being convicted on indictment of murder, he shall be dealt with under the Naval Discipline Act, the Army Act, or the Air Force Act, or in the case of a person not subject to those Acts under whichever of those Acts the Secretary of State considers to be appropriate, in like manner as a person upon whom sentence of death by shooting has been passed by a court martial.

(2) No prosecution in respect of any offence against this Act shall be instituted, otherwise than by way of proceedings for a trial by court martial, except by, or with the consent of, the Attorney-General :

Provided that this sub-section shall not prevent the arrest, or the issue or the execution of a warrant for the arrest, of any person in respect of any offence, or the remanding, in custody or on bail, of any person charged with such an offence, notwithstanding that the consent of the Attorney-General to the institution of a prosecution for the offence has not been obtained.

(3) Where in accordance with the provisions of proviso (b) to sub-section (1) of this section a direction is given by the Attorney-General for the trial by court martial of any person charged with an offence against this Act, that person, if not in military custody, may be transferred to military custody in accordance with such directions as may be given by the Secretary of State, and the Secretary of State may by order provide for discharging or varying any order which may have been made by a justice of the peace as to the remand or committal for trial of that person.

3.—(1) Notwithstanding any rule of law or practice, charges for any offences, except treason, may be joined with a charge for any offence against this Act in the same indictment or charge-sheet, if those charges are founded on the same facts, or form, or are a part of, a series of offences of the same or a similar character.

Joinder of  
charges and  
place of trial  
of offences.

*Treachery Act, 1940—contd.*

(2) Where any person is charged with an offence against this Act before a court martial and charges for other offences are joined in the same charge-sheet in accordance with the provisions of the last foregoing sub-section, the court shall have jurisdiction to try and to punish the person charged with those offences notwithstanding that they may be offences for which that person would not otherwise be triable by court martial, and the Naval Discipline Act, the Army Act and the Air Force Act shall apply in relation thereto accordingly.

(3) A person charged with an offence against this Act who is in the United Kingdom may, whether or not the offence was committed in the United Kingdom or in any British ship or aircraft, be taken in custody to any county or place in the United Kingdom, and may be proceeded against, indicted, tried and punished in any county or place in the United Kingdom, as if the offence had been committed in that county or place, and for all purposes incidental to or consequential on the trial or punishment of the offence it shall be deemed to have been committed in that county or place :

Provided that nothing in this sub-section shall be construed as preventing the trial of any person by court martial in any place in which he could apart from this sub-section be so tried.

Extent of Act.

4. This Act shall apply to anything done—

- (a) by a British subject elsewhere than in a Dominion, India, Burma, or Southern Rhodesia ;
- (b) by any person subject to the Naval Discipline Act, to military law or to the Air Force Act, in any place whatsoever ; or
- (c) by any person in the United Kingdom, or in any British ship or aircraft, not being a Dominion ship or aircraft.

Interpretation.

5.—(1) In this Act the following expressions have the meanings hereby respectively assigned to them, that is to say—

“ Dominion ” means any Dominion within the meaning of the Statute of Westminster, 1931, except Newfoundland, and includes any territory administered by His Majesty’s Government in a Dominion ;

<sup>22 & 23</sup>  
Geo. 5, c. 4.

*Treachery Act, 1940—contd.*

“Dominion ship or aircraft” means a British ship or aircraft registered in a Dominion, not being a ship or aircraft for the time being placed at the disposal of, or chartered by or on behalf of, His Majesty’s Government in the United Kingdom ;

“Enemy” means the enemy in any war in which His Majesty may be engaged ;

“Enemy alien” means a person who possesses the nationality of a State at war with His Majesty, not being either a British subject or a person certified by a Secretary of State to be a British protected person.

(2) For the purposes of this Act, any ship or aircraft registered in India, Burma, or Southern Rhodesia, not being a ship or aircraft for the time being placed at the disposal of, or chartered by or on behalf of, His Majesty’s Government in the United Kingdom, shall be treated as if it were a Dominion ship or aircraft.

(3) The functions of the Attorney-General under this Act may, in the event of a vacancy in the office or in the event of the Attorney-General being unable to act owing to illness or absence, be exercised by the Solicitor-General.

6. No. person shall be guilty of an offence under this Act by reason of anything done after such day as His Majesty may by Order in Council declare to be the date on which the emergency which was the occasion of the passing of this Act came to an end. Duration.

7.—(1) In the application of this Act to Scotland, section two shall have effect as if for the reference in sub-section (1) thereof to the Attorney-General there were substituted a reference to the Lord Advocate, and as if sub-section (2) and sub-section (3) thereof were omitted. Application to  
Scotland and  
to Northern  
Ireland.

(2) This Act shall in its application to Northern Ireland have effect as if for references therein to the Attorney-General there were substituted references to the Attorney-General for Northern Ireland, and as if for the reference therein to the Solicitor-General there were substituted a reference to the deputy appointed under section two of the Office of Attorney-General Act (Northern Ireland), 1923, to act as Attorney-General for Northern Ireland.

8. This Act may be cited as the Treachery Act, 1940. Short title.

*Treachery Act, 1940—concl'd.—Evidence and Powers of Attorney Act, 1940.*

Section 2.

SCHEDULE.

AMENDMENTS TO THE NAVAL DISCIPLINE ACT, ARMY ACT,  
AND AIR FORCE ACT.

*The Naval Discipline Act.*

Section forty-five of the Naval Discipline Act. After the word "death" there shall be inserted the following paragraph :—

" If he shall be guilty of an offence under the Treachery Act, 1940, he shall suffer death ; ".

*The Army Act and the Air Force Act.*

Section forty-one of the Army Act and of the Air Force Act. After paragraph (2) there shall be inserted the following paragraph :—

" (2A) If he is convicted of an offence under the Treachery Act, 1940, he liable to suffer death ; and ".

Section fifty-seven of the Army Act and of the Air Force Act. In sub-section (1) and in sub-section (2) after the word " murder " there shall be inserted the words " or for an offence under the Treachery Act, 1940, ".

THE EVIDENCE AND POWERS OF ATTORNEY ACT,  
1940.

(3 & 4 GEO. 6, CH. 28.)

CHAPTER 28.

*An Act to empower certain officers and other persons to administer oaths and take affidavits, to facilitate the proof in criminal proceedings of documents intercepted in the post, and to make further provisions as respects powers of attorney.*

[13th June, 1940.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1.—(1) The Lord Chancellor may by order provide for empowering officers of His Majesty's naval, military and air forces, holding such ranks or appointments as may be specified in the order, to administer oaths and take affidavits during any war in which His Majesty is engaged

Authority to  
administer  
oaths.

*Evidence and Powers of Attorney Act, 1940—contd.*

52 & 53 Vict.,  
c. 10.

for all or any purposes for which an oath may be administered or affidavit taken by a commissioner for oaths appointed under section one of the Commissioners for Oaths Act, 1889.

(2) The Secretary of State may by order provide for empowering persons serving in the diplomatic, consular or other foreign service of a Power which, by arrangement with His Majesty, has undertaken to represent His interest in a country in which He has for the time being no diplomatic or consular representatives appointed on the advice of His Government in the United Kingdom, to administer oaths and take affidavits for all or any of the purposes aforesaid.

(3) Any such order may prescribe—

- (a) the classes of persons to whom oaths may be administered or from whom affidavits may be taken in pursuance of the order ;
- (b) the places or circumstances in which an oath or affidavit may be so administered or taken ;
- (c) the facts to be stated in the jurat or attestation by any person by whom any oath or affidavit is so administered or taken.

(4) Any document purporting to have subscribed thereto the signature of any person in testimony of any oath or affidavit being administered or taken before him, and containing in the jurat or attestation a statement of the facts required to be stated therein by an order under this section, shall be admitted in evidence without proof of the signature being the signature of that person or of the facts so stated.

(5) As from the date on which an order made under sub-section (1) of this section comes into force, the Commissioners for Oaths (Prize Proceedings) Act, 1907, shall be repealed.

7 Edw. 7, c. 25.

2.—(1) In any criminal proceedings instituted, whether before or after the commencement of this Act, during the war period—

Proof in  
criminal  
proceedings  
of documents  
intercepted in  
post.

- (a) a certificate certifying that any document or documents annexed to, or otherwise identified by, the certificate constituted or formed part of a postal



*Evidence and Powers of Attorney Act, 1940—contd.*

packet which was examined by an authorised examiner on a date specified therein ; or

- (b) a certificate certifying that any photographic copy or copies so annexed or identified is or are a true copy or true copies, made by an authorised photographer, of any document or documents which constituted or formed part of such a postal packet as aforesaid,

shall, if purporting to be signed by a person being a competent officer, be admissible as evidence of the matters so certified, without proof of the signature being the signature of that person or of his official capacity.

(2) In this section—

- (a) the expression “ authorised examiner ” means a person authorised by or on behalf of His Majesty to examine (whether within or without the United Kingdom) postal packets which have been despatched by post ;
- (b) the expression “ authorised photographer ” means a person authorised as aforesaid to photograph (whether within or without the United Kingdom) such postal packets as aforesaid ;
- (c) the expression “ competent officer ” means a person holding any such appointment or office (whether within or without the United Kingdom) concerned with the examination of postal packets as may be specified in an Order of His Majesty in Council ;
- (d) the expression “ document ” includes an envelope or other outer covering of a postal packet ;
- (e) the expression “ postal packet ” has the same meaning as in the Post Office Act, 1908, but does not include a telegram while in the course of transmission by telegraph.

8 Edw. 7,  
c. 48.

(3) His Majesty may by Order in Council direct that the foregoing provisions of this section shall extend, with such exceptions, adaptations and modifications, if any, as may be specified in the Order, to the Isle of Man, any of the Channel Islands, any colony, any British protectorate, or any territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Majesty and is being exercised by His Majesty's Government in the United Kingdom.

*Evidence and Powers of Attorney Act, 1940—contd.*

3.—(1) No instrument creating a power of attorney, being an instrument to which this section applies, shall be of any effect unless it is attested by at least one witness and unless and until the instrument either—

Powers of attorney executed by certain persons.

(a) has been deposited in the central office of the Supreme Court under section two hundred and nineteen of the Supreme Court of Judicature (Consolidation) Act, 1925; or

15 & 16 Geo.  
5, c. 49.

(b) has been registered in Scotland in the books of council and session; or

(c) has been deposited in the proper office of the Supreme Court under section forty-eight of the Conveyancing Act, 1881, as it applies to Northern Ireland.

44 & 45 Vict.,  
c. 41.

(2) Rules of court may provide that no instrument to which this section applies shall be deposited or registered as aforesaid unless it is presented by a solicitor and there is produced at the time of its presentation—

(a) an affidavit sworn by that solicitor proving that he caused the instrument to be engrossed and sent to the donor for execution and that he believes that the signature of the person executing the instrument as the donor is the signature of that person; and

(b) an affidavit verifying the execution of the instrument, sworn by the attesting witness or one of the attesting witnesses:

Provided that no rule made by virtue of this sub-section as respects the Supreme Court shall apply to an instrument creating a power of attorney under section one of the Execution of Trusts (Emergency Provisions) Act, 1939, or any corresponding enactment of the Parliament of Northern Ireland.

2 & 3 Geo. 6;  
c. 114.

(3) A statement in writing by the donor of a power of attorney (whether or not contained in the instrument creating the power) that the instrument creating the power is not an instrument to which this section applies shall, in favour of a person dealing with the donee of the power, be conclusive evidence of that fact.

*Evidence and Powers of Attorney Act, 1940—contd.*

(4) For the purpose of the following enactments (which impose penalties for making false statements in a statutory declaration), namely,—

- (a) section five of the Perjury Act, 1911, 1 & 2 Geo. 5,  
c. 6.
- (b) section two of the False Oaths (Scotland) Act, 1933, 23 & 24 Geo.  
5, c. 20.
- (c) section twenty-one of the Statutory Declarations Act, 1835, 5 & 6 Will. 4,  
c. 62.

any such statement as is mentioned in the last foregoing sub-section shall be deemed to be a statutory declaration.

(5) This section applies to instruments executed after the commencement of this Act during the war period either—

- (a) outside the United Kingdom by a member of His Majesty's naval, military or air forces, or a person engaged in the nursing service or other auxiliary service of any of those forces ; or
- (b) by a British subject in territory which is under the sovereignty of, or in the occupation of, a Power with which His Majesty is at war, not being territory in the occupation of His Majesty or of a Power allied with His Majesty.

Proof of  
instrument  
creating powers  
of attorney.

4.—(1) A document purporting to be—

- (a) an office copy of an instrument deposited in the central office of the Supreme Court under section two hundred and nineteen of the Supreme Court of Judicature (Consolidation) Act, 1925 ; or
- (b) an extract of an instrument creating a power of attorney registered in Scotland in the books of council and session ; or
- (c) an office copy of an instrument deposited in the proper office of the Supreme Court under section forty-eight of the Conveyancing Act, 1881, as it applies to Northern Ireland,

shall, in any part of the United Kingdom, without further proof be sufficient evidence of the contents of the instrument and of the fact that it has been so deposited or registered.

*Evidence and Powers of Attorney Act, 1940—contd.*

(2) Sub-section (4) of the said section two hundred and nineteen and sub-section (4) of the said section forty-eight are hereby repealed.

5. In the application of sections one and two of this Act to Scotland the following modifications shall be made :— Application to Scotland.

(1) section one shall have effect as if there were added at the end of sub-section (1) the following words—  
“ or by a judge ordinary, magistrate, justice of the peace or notary public ” ;

(2) for sub-section (1) of section two, the following sub-section shall be substituted :—

“ (1) In any criminal proceedings instituted, whether before or after the commencement of this Act, during the war period—

(a) a certificate certifying that any document or documents specified therein and attached thereto constituted or formed part of a postal packet which was examined by an authorised examiner on a date specified therein ; or

(b) a certificate certifying that any document or documents so specified and attached is or are a true photographic copy or true photographic copies, made by an authorised photographer, of any document or documents which constituted or formed part of such a postal packet as aforesaid,

shall, if purporting to be signed by a person being a competent officer, be competent and sufficient evidence of the matters so certified, without proof of the signature being the signature of that person or of his official capacity, and any document so certified as a photographic copy shall be held as equivalent to the original.”

6. In the application of section one of this Act to Northern Ireland, for the reference to a commissioner for oaths appointed under section one of the Commissioners for Oaths Act, 1889, there shall be substituted a reference to a commissioner to administer oaths appointed under section seventy-four of the Supreme Court of Judicature Act (Ireland), 1877. Application to Northern Ireland.

*Evidence and Powers of Attorney Act, 1940—concl'd.—India and Burma (Emergency Provisions) Act, 1940.*

Provisions as to orders.

7. Any Order in Council or order made under this Act may be revoked or varied by a subsequent Order in Council or order made in like manner.

Short title and interpretation.

8.—(1) This Act may be cited as the Evidence and Powers of Attorney Act, 1940.

(2) In this Act the expression “war period” means the period during which the <sup>1</sup>Emergency Powers (Defence) Act, <sup>2 & 3 Geo. 6, c. 62.</sup> 1939, is in force.

THE INDIA AND BURMA (EMERGENCY PROVISIONS)  
ACT, 1940.

(3 & 4 GEO. 6, CH. 33.)

CHAPTER 33.

*An Act to make emergency provision with respect to the Government of India and Burma.*

[27th June, 1940.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Provisions as to India.

1.—(1) Any power of appointment to, or removal from, any office in India (including any power as to appointments to act temporarily in an office) being a power which, apart from the provisions of this section, would be exercisable by His Majesty, shall, during the period specified in section three of this Act, be exercisable also by the Governor-General :

Provided that the foregoing provisions of this sub-section shall not apply in relation to the office of Governor-General or the office of His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States, but section ninety of the Government of India Act (which, as set out in the Ninth Schedule to the Government of India Act, 1935, provides for the temporary exercise of <sup>26 Geo. 5, c. 2.</sup> the powers of the Governor-General in the event of a vacancy in that office) shall apply in relation to any period during which the Governor-General is for any reason unable to perform the duties of his office as it applies in relation to the period mentioned in sub-section (1) of the said section ninety.

*India and Burma (Emergency Provisions) Act, 1940—contd.*26 Geo. 5,  
c. 2.

(2) Any provision which, under the Government of India Act, 1935, could be made—

(a) by an Order in Council made in accordance with the provisions of sub-section (1) of section three hundred and nine of that Act; or

(b) by rules made by or with the sanction of the Secretary of State,

may, during the period specified in section three of this Act, be made also by the Governor-General by notification in the Gazette of India; and any notification made under this sub-section may be varied or revoked by a subsequent notification made thereunder or in any other manner in which such an Order in Council, or, as the case may be, such rules could be varied or revoked.

26 Geo. 5,  
c. 2.

(3) Section seventy-two of the Government of India Act (which, as set out in the Ninth Schedule to the Government of India Act, 1935, confers on the Governor-General power to make Ordinances in cases of emergency) shall, as respects Ordinances made during the period specified in section three of this Act, have effect as if the words “for the space of not more than six months from its promulgation” were omitted; and notwithstanding the provision in the said section seventy-two that the power of making Ordinances thereunder is subject to the like restrictions as the power of the Indian legislature to make laws—

(a) Ordinances may, during the said period, be made under that section affecting the Army Act, the Air Force Act, or the Naval Discipline Act; and

(b) section one hundred and eleven of the Government of India Act, 1935 (which exempts certain British subjects from certain Indian laws), shall not apply to any Ordinance made under the said section seventy-two during that period.

52 & 53 Vict.,  
c. 63.

(4) The functions of the Governor-General under this section shall be deemed for the purposes of the Government of India Act, 1935, to be included among the functions which he is, by or under that Act, required to exercise in his discretion, and so much of section eighteen A of the Interpretation Act, 1889, as provides that the expression “Governor-General” in relation to the period between the commencement of Part III of the Government of India Act, 1935, and the establishment of the Federation of India, means the Governor-General in Council, shall not apply to this section.

*India and Burma (Emergency Provisions) Act, 1940—contd.*

Provisions as  
to Burma.

2.—(1) Any power of appointment to, or removal from, any office in Burma which, apart from the provisions of this section, would be exercisable by His Majesty, shall, during the period specified in section three of this Act, be exercisable also by the Governor :

Provided that this sub-section shall not apply in relation to the office of Governor.

(2) Any provision which, under the Government of <sup>26 Gen. 5, & 1</sup> Burma Act, 1935, could be made—  
<sup>Edw. 8, c. 3.</sup>

(a) by an Order in Council made in accordance with the provisions of sub-section (1) of section one hundred and fifty-seven of that Act ; or

(b) by rules made by the Secretary of State,

may, during the period specified in section three of this Act, be made also by the Governor by notification in the official Gazette of Burma ; and any notification made under this sub-section may be varied or revoked by a subsequent notification made thereunder, or in any other manner in which such an Order in Council, or, as the case may be, such rules, could be varied or revoked.

(3) Notwithstanding anything in Part IV of the Government of Burma Act, 1935, any Ordinance promulgated under section forty-two of that Act during the period specified in section three of this Act and any Governor's Act made during that period may affect the Army Act, the Air Force Act or the Naval Discipline Act, or any similar law enacted by competent authority in India ; and section forty-four of the Government of Burma Act, 1935 (which exempts certain British subjects from certain Burma laws), shall not apply to any Ordinance under the said section forty-two or Governor's Act promulgated or made during that period .

(4) The functions of the Governor under this section shall be deemed for the purposes of the Government of Burma Act, 1935, to be included among the functions which he is, by or under that Act, required to exercise in his discretion.

(5) The operation of sub-section (1) of section nine of the Government of Burma Act, 1935 (which relates to the procedure to be followed as to Instructions from His Majesty), is hereby suspended during the period specified in section three of this Act.

Period during  
which powers  
are exercisable

3. The period referred to in the preceding sections is the period beginning with the date of the passing of this Act and ending with such date as His Majesty may by Order in Council declare to be the end of the emergency which was the occasion of the passing of this Act.

*India and Burma (Emergency Provisions) Act, 1940—concl'd.*  
*—Merchant Shipping (Salvage) Act, 1940.*

4.—(1) Without prejudice to the provisions of section three hundred and fourteen of the Government of India Act, 1935, and section ten of the Government of Burma Act, 1935 (which provide for the control of the Secretary of State over the discretionary powers of the Governor-General of India and the Governor of Burma), the powers exercisable by virtue of this Act by the Governor-General of India and the Governor of Burma shall not be exercised except on the direction of the Secretary of State :

Reference to  
be made to  
Secretary of  
State.

Provided that the Governor-General or the Governor, as the case may be, may exercise any such powers without any such direction if, and only if, it appears to him that it is essential that the powers should be exercised and that a previous reference to the Secretary of State is likely to cause undue delay in the exercise thereof.

(2) The validity of anything done by the Governor-General or the Governor shall not be called in question on the ground that it was done otherwise than in accordance with the provisions of this section.

5. This Act may be cited as the India and Burma (Emergency Provisions) Act, 1940.

Short title.

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**THE MERCHANT SHIPPING (SALVAGE) ACT, 1940.**

(3 & 4 GEO. 6, CH. 43.)

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**CHAPTER 43.**

*An Act to amend the law with respect to the right of the Crown to claim salvage.*

[25th July, 1940.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1.—(1) Where salvage services are rendered by or with the aid of any ship, aircraft or other property whatsoever belonging to His Majesty, His Majesty shall be entitled to claim salvage for those services, and shall have the same rights and remedies in respect of those services as any other salvor would have had if the ship, aircraft or property had belonged to him.

Right of  
the Crown  
to claim  
salvage.



*Merchant Shipping (Salvage) Act, 1940—contd.*

(2) Where salvage services are rendered by or with the aid of any requisitioned ship or aircraft, the ship or aircraft shall be treated, for the purpose of any claim in respect of those services, as belonging to His Majesty and not as belonging to any other person :

Provided that this sub-section shall not apply if, under any agreement made on behalf of His Majesty in connection with the requisition, salvage earned by the ship or aircraft is for the benefit of some person other than His Majesty.

(3) In this section the expression " requisitioned ship or aircraft " means a ship or aircraft which for the time being is in the possession of, or at the disposal of, any person on behalf of His Majesty, by virtue of the exercise of any power conferred by regulations made under the <sup>2 & 3 Geo. 6,</sup> Emergency Powers (Defence) Act, 1939, or by section seven of the Air <sup>c. 62,</sup> Navigation Act, 1920, as amended by any subsequent enactment, or any power exercisable by virtue of the prerogative of the Crown ; and the expression " requisition " shall be construed accordingly. <sup>10 & 11 Geo. 5, c. 80.</sup>

Application  
to countries  
outside the  
United  
Kingdom.

2. References in the foregoing section to the <sup>2 & 3 Geo. 6,</sup> Emergency Powers (Defence) Act, 1939, or section seven of the Air <sup>c. 62,</sup> Navigation Act, 1920, shall respectively be construed— <sup>10 & 11 Geo. 5, c. 80.</sup>

(a) in the application of this Act to any country outside the United Kingdom to which that Act or that section as the case may be has been extended by Order in Council, as a reference to that Act or section as so extended ; and

(b) in the application of this Act to any other country outside the United Kingdom, as a reference to any corresponding enactment in force in that country.

Application  
to Northern  
Ireland.

3. The power to make rules of court under section sixty-one of the Supreme Court of Judicature (Ireland) Act, 1877, <sup>40 & 41 Vict., c. 57.</sup> as amended by any subsequent enactment, shall include power to make rules for the purposes of this Act.

Short title,  
citation, con-  
struction and  
repeal.

4.—(1) This Act may be cited as the Merchant Shipping (Salvage) Act, 1940.

(2) This Act shall be construed as one with the Merchant Shipping Acts, 1894 to 1938, and may be cited together with those Acts as the Merchant Shipping Acts, 1894 to 1940.

*Merchant Shipping (Salvage) Act, 1940—concl'd.—Emergency Powers (Defence) (No. 2) Act, 1940.*

(3) The enactments set out in the Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.

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SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short title.	Extent of Repeal.
57 & 58 Vict., c. 60	The Merchant Shipping Act, 1894.	In sub-section (1) of section five hundred and fifty-seven, the words from the beginning of the sub-section to "service, and".
6 & 7 Geo. 5, c. 41	The Merchant Shipping (Salvage) Act, 1916.	The whole Act.

THE EMERGENCY POWERS (DEFENCE) (No. 2) ACT,  
1940.

(3 & 4 GEO. 6, CH. 45.)

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CHAPTER 45.

*An Act to remove doubts as to the extent of the powers which may be exercised by His Majesty under the Emergency Powers (Defence) Act, 1939.*

[1st August, 1940.]

WHEREAS by the <sup>1</sup>Emergency Powers (Defence) Act, 1939, His Majesty was enabled to exercise certain powers for the purpose of meeting the emergency existing at the date of the passing of that Act, but the said powers did not enable provision to be made for the trial by courts

2 & 3 Geo. 6  
c. 62.

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<sup>1</sup> *Supra*, p. 1.

*Emergency Powers (Defence) (No. 2) Act, 1940—contd.*

martial of persons not being subject to the Naval Discipline Act, to military law, or to the Air Force Act :

And whereas by reason of the development of hostilities since that date it has become expedient to remove doubts as to the extent of the said powers in order to secure that provision for the trial of such persons by special courts may be made where necessary :

Now, therefore, be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Power to provide for trial of offences by special courts in certain areas.

1.—(1) It is hereby declared that the powers conferred on His Majesty by the <sup>1</sup>Emergency Powers (Defence) Act, 1939 (hereinafter referred to as “the principal Act”), to <sup>2 & 3 Geo. 6, c. 62.</sup> make by Order in Council such Defence Regulations as appear to him to be necessary or expedient for securing the public safety, the defence of the realm, the maintenance of public order, and the efficient prosecution of any war in which His Majesty may be engaged, include power to make provision for securing that, where by reason of recent or immediately apprehended enemy action the military situation is such as to require that criminal justice should be administered more speedily than would be practicable by the ordinary courts, persons, whether or not subject to the Naval Discipline Act, to military law, or to the Air Force Act, may, in such circumstances as may be provided by the Regulations, be tried by such special courts, not being courts martial, as may be so provided.

(2) After paragraph (a) of sub-section (2) of section one of the principal Act there shall be inserted the following paragraph :—

“(aa) make provision for the apprehension and punishment of offenders and for their trial by such courts, not being courts martial, and in accordance with such procedure as may be provided for by the Regulations, and for the proceedings of such courts being subject to such review as may be so provided for, so, however, that provision shall be made for such proceedings being reviewed by not less than three persons who hold or have held high judicial office, in all

<sup>1</sup> *Supra*. p. 1.

*Emergency Powers (Defence) (No. 2) Act, 1940—concl'd.—Naval and Marine Forces (Temporary Release from Service) Act, 1940.*

cases in which sentence of death is passed. and in such other circumstances as may be provided by the Regulations ;”

and in the said paragraph (a) the words “for the apprehension, trial and punishment of persons offending against the Regulations and” are hereby repealed.

2. This Act may be cited as the Emergency Powers (Defence) (No. 2) Act, 1940, and shall be included among the Acts which may be cited together as the Emergency Powers (Defence) Acts, 1939 and 1940. Short title and citation.

## THE NAVAL AND MARINE FORCES (TEMPORARY RELEASE FROM SERVICE) ACT, 1940.

(4 & 5 GEO. 6, CH. 4.)

### CHAPTER 4.

*An Act to provide for the release and recall of men serving in the royal navy or the royal marine forces.*

[19th December, 1940.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1.—(1) At any time during the war period any seaman or marine serving in the royal navy or the royal marine forces may, on the order of the competent naval authority, be released from his service, and, so long as the order remains in force, he shall be in the position in which he would be if he had, at the time of the making of the order, been duly transferred to the royal naval reserve, and no order calling the royal naval reserve into actual service were in force. Power to release non-service in the navy or marine forces.

(2) Any order made under this section with respect to any person may be revoked by the competent naval authority, and, on revoking such an order, the said authority may, if the term of service of that person has not expired, give directions requiring him to re-enter into actual service for the remainder of that term in the royal navy or the royal marine forces, as the case may be, and to attend at the place and time fixed by those directions.

(3) For the purposes of section twenty-one of the Royal Naval Reserve (Volunteer) Act, 1859 (which provides for the punishment of a person failing to attend on being called

*Naval and Marine Forces (Temporary Release from Service) Act, 1940—contd.—India and Burma (Postponement of Elections) Act, 1941.*

into actual service under that Act), any directions given with respect to any person under the last foregoing sub-section shall have effect as if they were an order made by the Admiralty under that Act calling him into actual service.

(4) Any proclamation under section nine of the Naval Enlistment Act, 1853, section five of the Royal Naval Reserve (Volunteer) Act, 1859, or section one of the Royal Marines Act, 1939, extending the term of service of persons serving in the royal navy or the royal marine forces shall apply to any person released from service by an order made under this section in like manner as if no such order had been made; and accordingly the references in sub-section (2) of this section to the term of service of any such person shall be construed as references to his term of service as extended by any such proclamation.

Short title,  
interpreta-  
tion and  
commence-  
ment.

2.—(1) This Act may be cited as the Naval and Marine Forces (Temporary Release from Service) Act, 1940.

(2) In this Act the following expressions have the meanings hereby respectively assigned to them, that is to say:—

“seaman or marine” has the same meaning as in the Naval and Marine Pay and Pensions Act, 1865; 16 & 17  
Vict., c. 69.

“the competent naval authority” means the Admiralty or an officer designated by the Admiralty;

“the war period” means the period beginning with the first day of September nineteen hundred and thirty-nine and ending with such date as His Majesty may by Order in Council declare to be the date on which the emergency that was the occasion of the passing of this Act came to an end.

(3) This Act shall be deemed to have been in force as from the first day of September nineteen hundred and thirty-nine, and any order made before the passing of this Act releasing any seaman or marine from service in the royal navy or the royal marine forces shall be deemed to have been made under this Act.

THE INDIA AND BURMA (POSTPONEMENT OF ELECTIONS) ACT, 1941.

(4 & 5 GEO. 6, CH. 44.)

CHAPTER 44.

*An Act to enable the dissolution of Provincial Legislative Assemblies in India and the House of Representatives in Burma to be postponed.*

[2nd October, 1941.]

BE it enacted by the King's Most Excellent Majesty, by

*India and Burma (Postponement of Elections) Act, 1941—contd.*

and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

26 Geo. 5 & 1 Edw. 8, c. 2. 1.—(1) In each province in India, the first Legislative Assembly under the Government of India Act, 1935, shall, notwithstanding anything in sub-section (2) of section sixty-one of that Act, continue until twelve months after the end of the war period, unless previously dissolved under sub-section (2) of section sixty-two of that Act. Postponement of certain general elections.

26 Geo. 5 & 1 Edw. 8, c. 3. (2) The first House of Representatives under the Government of Burma Act, 1935, shall, notwithstanding anything in sub-section (4) of section eighteen of that Act, continue until twelve months after the end of the war period, unless previously dissolved under sub-section (2) of that section.

(3) In this section, the expression “the war period” means the period for which the <sup>1</sup>Emergency Powers (Defence) Act, 1939, is in force.

2 & 3 Geo. 6, c. 62. 2. This Act may be cited as the India and Burma (Postponement of Elections) Act, 1941. Short title.

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<sup>1</sup> *Supra*, p. 1.



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**PART II**  
**ACTS OF THE CENTRAL**  
**LEGISLATURE.**

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ACT No. XXXV OF 1939.

THE DEFENCE OF INDIA ACT, 1939.

(Received the assent of the Governor General on the 29th September, 1939.)

*An Act to provide for special measures to ensure the public safety and interest and the defence of British India and for the trial of certain offences.*

WHEREAS an emergency has arisen which renders it necessary to provide for special measures to ensure the public safety and interest and the defence of British India and for the trial of certain offences ;

AND WHEREAS the Governor General in his discretion has declared by Proclamation under sub-section (1) of section 102 of the Government of India Act, 1935, that a grave emergency exists whereby the security of India is threatened by war ;

It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Defence of India Act, 1939.

Short title,  
extent,  
commence-  
ment and  
duration.

(2) It extends to the whole of British India, and it applies also—

(a) to British subjects and servants of the Crown in any part of India ;

(b) to British subjects who are domiciled in any part of India wherever they may be ;

(c) in respect of the regulation and discipline of any naval, military or air force raised in British India, to members of, and persons attached to, employed with, or following, that force, wherever they may be ; and

(d) to, and to persons on, ships and aircraft registered in British India wherever they may be.

(3) This section shall come into force at once, and the remaining provisions of this Act shall come into force<sup>2</sup> in

<sup>1</sup> For application of the Act to different areas see Vol. II., pp. 1-3 and Vol. III., pp. 263, 264, 266, 267 and 273.

<sup>2</sup> Chapters II and IV were brought into force throughout British India from the 14th November, 1939, see Notification No. 253 OR/39, dated the 14th November, 1939, Gazette of India, Extraordinary, dated the 14th November, 1939—Vol. II, p. 467.

*Defence of India Act, 1939—contd.*

such areas and on such date or dates as the Central Government may, by notification in the official Gazette, appoint.

(4) It shall be in force during the continuance of the present war and for a period of six months thereafter.

## CHAPTER II.

## EMERGENCY POWERS.

Power to  
make rules.

2. (1) The Central Government may, by notification in the official Gazette, make such rules as appear to it to be necessary or expedient for securing the defence of British India, the public safety, the maintenance of public order or the efficient prosecution of war, or for maintaining supplies and services essential to the life of the community.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), the rules may provide for, or may empower any authority to make orders providing for, all or any of the following matters, namely :—

- (i) ensuring the safety and welfare of His Majesty's forces, ships and aircraft, and preventing the prosecution of any purpose likely to prejudice the operations of His Majesty's forces or the forces of His Majesty's allies ;
- (ii) prohibiting anything likely to prejudice the training, discipline or health of His Majesty's forces ;
- (iii) preventing any attempt to tamper with the loyalty of persons in, or to dissuade (otherwise than with advice given in good faith to the person dissuaded for his benefit or that of any member of his family or any of his dependents) persons from entering, the service of His Majesty ;
- (iv) preventing anything likely to assist the enemy or to prejudice the successful conduct of war, including—
  - (a) communications with the enemy or agents of the enemy,
  - (b) acquisition, possession without lawful authority or excuse and publication of information likely to assist the enemy,

*Defence of India Act, 1939—contd.*

- (c) contribution to, participation in, or assistance in, the floating of loans raised by or on behalf of the enemy, and
- (d) advance of money to, or contracts or commercial dealings with, the enemy, enemy subjects or persons residing, carrying on business, or being, in enemy territory;
- (v) preventing the spreading without lawful authority or excuse of false reports or the prosecution of any purpose likely to cause disaffection or alarm, or to prejudice His Majesty's relations with foreign powers, <sup>1</sup>[or with States in India, or to prejudice the maintenance of peaceful conditions in the tribal areas,] or to promote feelings of enmity and hatred between different classes of His Majesty's subjects ;

*Explanation.*—To point out, without malicious intention and with an honest view to their removal, matters which are producing, or have a tendency to produce, feelings of enmity or hatred between different classes of His Majesty's subjects does not amount to promoting such feelings within the meaning of this clause ;

- (vi) requiring the publication of news and information ;
- (vii) regulating the conduct of persons in respect of areas the control of which is considered necessary or expedient, and the removal of persons from such areas ;
- (viii) requiring any person or class of persons to comply with a scheme of defence ;
- (ix) ensuring the safety of ports, dockyards, lighthouses, lightships, aerodromes, railways, telegraphs, post offices, signalling apparatus and all other means of communication, sources of water-supply, works for the supply of water, gas or electricity and any other place or thing the protection of which is necessary for the defence of British India ;
- (x) the apprehension and detention in custody of any person reasonably suspected of being of hostile origin or of having acted, acting or being about to act, in a manner prejudicial to the

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<sup>1</sup> Ins., s. 2 of the Defence of India (Amendment) Act, 1940 (19 of 1940).

*Defence of India Act, 1939—contd.*

public safety or interest or to the defence of British India, the prohibition of such person from entering or residing or remaining in any area, and the compelling of such person to reside and remain in any area, or to do, or abstain from doing, anything ;

- (xi) the control of persons entering, departing from, or travelling in, British India, and of foreigners residing or being in British India ;
- (xii) prohibiting or regulating traffic, and the use of vessels, buoys, lights and signals, in ports and territorial, tidal and inland waters ;
- (xiii) restricting the charter of foreign vessels ;
- (xiv) regulating the structure and equipment of vessels  
1\*   \*   \*   \*   \*   \*   \*   \*   \*   \*  
for the purpose of ensuring the safety thereof and of persons therein ;
- (xv) regulating work in dockyards and shipyards in respect of the construction and repairs of vessels ;
- (xvi) prohibiting or regulating the sailings of vessels from ports, traffic at aerodromes and the movement of aircraft, and traffic on railways, tramways and roads, and reserving, and requiring to be adapted, for the use of the Central Government, all or any accommodation in vessels, aircraft, railways, tramways, or road vehicles for the carriage of persons, animals or goods ;
- (xvii) impressment of vessels, aircraft, vehicles and animals for transport ;
- (xviii) prohibiting or regulating the use of postal, telegraph or telephonic services, including the taking possession of such services and the delaying, seizing, intercepting or interrupting of postal articles or telegraphic or telephonic messages ;
- (xix) regulating the delivery otherwise than by postal or telegraphic service of postal articles and telegrams ;
- (xx) the control of any trade or industry for the purpose of regulating or increasing the supply of, and the obtaining of information with

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<sup>1</sup> Words omitted, Defence of India (Amendment) Ordinance, 1942 (23 of 1942).

*Defence of India Act, 1939—contd.*

regard to, articles or things of any description whatsoever which can be used in connection with the conduct of war or for maintaining supplies and services essential to the life of the community ;

- (xxi) ensuring the ownership and control of mines by British subjects ;
- (xxii) controlling the use or disposal of, or dealings in, coin, bullion, securities or foreign exchange ;
- (xxiii) the control of any road or pathway, waterway, ferry or bridge, river, canal or other source of water-supply ;
- (xxiv) the requisitioning of any property, movable or immovable, including the taking possession thereof and the issue of any orders in respect thereof ;
- (xxv) prohibiting or regulating the possession, use or disposal of—
  - (a) explosives, inflammable substances, arms and ammunitions of war,
  - (b) vessels,
  - (c) wireless telegraphic apparatus,
  - (d) aircraft, and
  - (e) photographic and signalling apparatus and any means of recording information ;
- (xxvi) applying the provisions of the Sea Customs Act, 1878, and in particular section 19 thereof, to the prohibition or restriction of the import or export of goods to a particular person or a particular class of persons ;
- (xxvii) prohibiting or regulating the bringing into, or taking out of, British India and the possession, use or transmission of ciphers and other secret means of communicating information ;
- (xxviii) prohibiting or regulating the publication of inventions and designs ;
- (xxix) preventing the disclosure of official secrets ;
- (xxx) prohibiting or regulating meetings, assemblies, fairs and processions ;

*Defence of India Act, 1939—contd.*

- (xxxi) preventing or controlling any use, calculated to prejudice the public safety, the maintenance of public order, the defence of British India or the prosecution of war, of uniforms, flags and insignia and of anything similar thereto ;
  - (xxxii) ensuring the accuracy of any report or declaration legally required of any person ;
  - (xxxiii) preventing the unauthorised change of names ;
  - (xxxiv) preventing anything likely to cause misapprehension in respect of the identity of any official person, official document or official property or in respect of the identity of any person, document or property purporting to be, or resembling, an official person, official document or official property ;
  - (xxxv) entry into, and search of, any place reasonably suspected of being used for any purpose prejudicial to the public safety or interest, to the defence of British India or to the efficient prosecution of war, and for the seizure and disposal of anything found there and reasonably suspected of being used for such purpose.
- (3) The rules made under sub-section (1) may further—
- (i) provide for the arrest and trial of persons contravening any of the rules ;
  - (ii) provide that any contravention of, or any attempt to contravene, and any abetment of, or attempt to abet, the contravention of any of the provisions of the rules, or any order issued under any such provision, shall be punishable with imprisonment for a term which may extend to seven years or with fine or with both ;
  - (iii) provide for the seizure, detention and forfeiture of any property in respect of which such contravention, attempt or abetment as is referred to in the preceding clause has been committed ;
  - (iv) confer power and impose duties—
    - (a) upon the Central Government or officers and authorities of the Central Government as respects any matter, notwithstanding that that matter is one in respect of which the Provincial Legislature also has power to make laws, and

*Defence of India Act, 1939—contd.*

- (b) upon any Provincial Government or officers and authorities of any Provincial Government as respects any matter notwithstanding that that matter is one in respect of which the Provincial Legislature has no power to make laws ;
- (v) prescribe the duties and powers of public servants and other persons as regards preventing the contravention of, or securing the observance of, the rules ;
- (vi) provide for preventing obstruction and deception of, and disobedience to, any person acting, and interference with any notice issued, in pursuance of the rules ;
- (vii) prohibit attempts by any person to screen from punishment any one, other than the husband or wife of such person, contravening any of the rules ;
- (viii) empower or direct any authority to take such action as may be specified in the rules or as may seem necessary to such authority for the purpose of ensuring the public safety or interest or the defence of British India ;
- (ix) provide for charging fees in respect of the grant or issue of any licence, permit, certificate or other document for the purposes of the rules.

(4) The Central Government may by order direct that any power or duty which by rule under sub-section (1) is conferred or imposed upon the Central Government shall in such circumstances and under such conditions, if any, as may be specified in the direction be exercised or discharged—

- (a) by any officer or authority subordinate to the Central Government, or
- (b) whether or not the power or duty relates to a matter with respect to which a Provincial Legislature has power to make laws, by any Provincial Government or by any officer or authority subordinate to such Government, or
- (c) by any other authority.

(5) A Provincial Government may by order direct that any power or duty which by rule made under sub-section (1) is conferred or imposed on the Provincial Government, or which, being by such rule conferred or imposed on the Central Government, has been directed under sub-section (4) to be



*Defence of India Act, 1939—contd.*

exercised or discharged by the Provincial Government, shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised or discharged by any officer or authority, not being <sup>1</sup>[(except in the case of a Chief Commissioner's Province)] an officer or authority subordinate to the Central Government.

Effect of  
rules, etc.,  
inconsistent  
with other  
enactments.

3. Any rule made under section 2, and any order made under any such rule, shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

Special  
powers to  
control  
civilian  
personnel  
employed in  
connexion  
with His  
Majesty's  
forces.

4. The Central Government may, by notification in the official Gazette, direct by general or special order that any persons who, not being members of His Majesty's forces, are attached to, or employed with, or following, those forces, shall be subject to naval, military or air force law, and thereupon such persons shall be subject to discipline, and liable to punishment for offences, under the Indian Navy (Discipline) Act, 1934, the Indian Army Act, 1911, or the Indian Air Force Act, 1932, as the case may require, as if they were included in such class of persons subject to any of those Acts as may be specified in the notification.

XXXIV of  
1934.  
VIII of 1911.  
XIV of 1932.

Enhanced  
penalties.

5. (1) If any person, with intent to wage war against His Majesty or to assist any State at war with His Majesty, contravenes any provision of the rules made under section 2 or any order issued under any such rule, he shall be punishable with death, or transportation for life, or imprisonment for a term which may extend to ten years, and shall also be liable to fine.

(2) If any person—

(a) contravenes any such provision of, or any such rule or order made under, the Indian Aircraft Act, 1934, as may be notified in this behalf by <sup>XXII</sup> of 1934, the Central Government, or

(b) in any area notified in this behalf by a Provincial Government, contravenes any such provision of, or any such rule made under, the Indian Arms Act, 1878, the Indian Explosives Act, 1884, or <sup>XI</sup> of 1878, the Explosive Substances Act, 1908, as may be <sup>IV</sup> of 1884, notified in this behalf by the Provincial Govern- <sup>VI</sup> of 1908.  
ment,

<sup>1</sup> Ins. .s. 2 of the Defence of India (Amendment) Act, 1940 (19 of 1940).

*Defence of India Act, 1939—contd.*

he shall, notwithstanding anything contained in any of the aforesaid Acts or rules made thereunder, be punishable with imprisonment for a term which may extend to five years, or, if his intention is to assist any State at war with His Majesty or to wage war against His Majesty, with death, transportation for life, or imprisonment for a term which may extend to ten years, and shall in either case also be liable to fine.

(3) For the purposes of this section, any person who attempts to contravene, or abets or attempts to abet, or does any act preparatory to, a contravention of, a provision of any law, rule or order, shall be deemed to have contravened that provision.

6. During the continuance of this Act,—

Temporary  
amendments  
of Acts.

1 & 2 Geo. 5,  
c. 20.

(1) section 1 of the Geneva Convention Act, 1911, shall have effect in British India as if, in sub-section (1) thereof, for the words "shall be liable on summary conviction to a fine not exceeding ten pounds" the words "shall be punishable with imprisonment for a term which may extend to six months and shall also be liable to a fine" had been substituted;

XIX of 1923.

(2) section 5 of the Indian Official Secrets Act, 1923, shall have effect as if—

(a) in sub-section (1) thereof, after the words "in his possession or control" the words "any information likely to assist the enemy, as defined in the rules made under the Defence of India Act, 1939, or" had been inserted, and after the words "in such a place" the words "or which relates to, or is used in, a protected area, as defined in the rules made under the Defence of India Act, 1939, or relates to anything in such an area," had been inserted; and

XXXV of  
1939.

XXXV of  
1939.

(b) for sub-section (4) thereof, the following sub-section had been substituted, namely:—

"(4) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to five years, or, if such offence is committed with intent to assist any State at war with His Majesty, or to wage war against His Majesty, with death, or transportation for life, or imprisonment for a term which may extend to ten years, and shall in either case also be liable to fine."

*Defence of India Act, 1939—contd.*

<sup>1</sup>[(24) section 12 of the Indian Official Secrets Act, 1923, XIX of 1923, shall have effect as if after clause (a) the following clause had been inserted, namely :—

“(aa) an offence under section 5 shall be a cognizable and non-bailable offence,”];

(3) the Indian Press (Emergency Powers) Act, 1931, XXXIII of 1931, shall have effect as if in sub-section (1) of section 4 thereof, after clause (b), the following word and clause had been inserted, namely :—

“or

(bb) directly or indirectly convey any ‘confidential information’, any ‘information likely to assist the enemy’ or any ‘prejudicial report’, as defined in the rules made under the Defence of India Act, 1939, or are calculated to instigate the contravention of any of those rules,”; XXXV of 1939.

(4) the Indian Aircraft Act, 1934, shall have effect as if— XXXII of 1934.

(a) at the end of clause (r) of sub-section (2) of section 5 the following words had been inserted, namely :—

“including the taking of steps necessary to secure compliance with, or to prevent contravention of, the rules regulating such matters, or, where any such rule has been contravened, to rectify, or to enable proceedings to be taken in respect of, such contravention ”;

(b) in clause (b) of sub-section (1) of section 8, for the words, brackets, letters and figures “ clause (h) or clause (i) of sub-section (2) of section 5 ”, the words, brackets, letters and figures “ clauses (d), (e), (h), (i), (k) or (l) of sub-section (2) of section 5, or the commission of an offence punishable under section 11,” had been substituted;

(c) in section 11, after the words “ in the air ” the words “ or in such a manner as to interfere with any of His Majesty’s forces, ships or aircraft ” had been inserted;

(d) in section 13, for the words, brackets, figures and letters “ clause (i) or clause (l) of sub-section (2) of section 5 ” the words, brackets, figures and letters “ clauses (c), (d), (e), (h), (i), (j), (k) or (l) of sub-section (2) of section 5, or punishable under section 11 ” had been substituted; and

(e) section 14 had been omitted; and

<sup>1</sup> Ins., Defence of India (Amendment) Ordinance, 1942 (23 of 1942).

*Defence of India Act, 1939—contd.*

(5) <sup>1</sup>[the Indian Navy (Discipline) Act, 1934, shall have effect as if in the Naval Discipline Act as set forth in the First Schedule to that Act— XXXIV of 1934.

(a) in section 58, in regulations (1) and (16) for the word “five” the word “three”, in regulation (7) for the words “the president is a captain” the words “the president is a commander”, and in regulation (15) for the word “four” the word “two” had been substituted;

(b) for section 90 the following section had been substituted, namely:—]

“90. (1) If any person who would not otherwise be subject to this Act enters into an engagement with the Central Government to serve His Majesty—

(a) in a particular ship, or

(b) in such particular ship or in such ships as the Officer Commanding the Indian Navy, or any officer empowered in this behalf by the Officer Commanding the Indian Navy, may from time to time determine,

and agrees to become subject to this Act upon entering into the engagement, that person shall, so long as the engagement remains in force, and notwithstanding that for the time being he may not be serving in any ship, be subject to this Act, and the provisions of this Act shall apply in relation to that person, as if, while subject to this Act, he belonged to His Majesty's navy and were borne on the books of one of His Majesty's ships in commission.

(2) The Central Government may by order direct that, subject to such exceptions as may in particular cases be made by or on behalf of the Officer Commanding the Indian Navy, persons of any such class as may be specified in the order shall, while subject to this Act by virtue of this section, be deemed to be officers or petty officers, as the case may be, for the purposes of this Act or of such provisions of this Act as may be so specified; and any such order may be varied or revoked by a subsequent order.”;

<sup>2</sup>[(6) the Motor Vehicles Act, 1939, shall have effect subject to the following modifications, namely:—

(a) Notwithstanding anything contained in section 62 of that Act a permit under that section may be granted, and shall be granted in any case in which

<sup>1</sup> Subs., Defence of India (Amendment) Ordinance, 1942 (23 of 1942),

<sup>2</sup> Ins., *ibid.*

*Defence of India Act, 1939—contd.*

the Provincial Government so directs, to be effective for a period exceeding four months ;

- (b) Notwithstanding anything contained in Chapter IV of that Act, but without prejudice to the provisions of section 60, the transport authority which granted a permit may at any time cancel the permit or may suspend it for such period as it thinks fit, if in the opinion of the transport authority it is no longer in the public interest that the service should continue and the vehicle or vehicles covered by the permit can be more usefully employed elsewhere ; and the transport authority shall cancel or suspend a permit issued by it if so required by the Provincial Government ;
- (c) If in any particular case the Provincial Government thinks fit so to order, the authority empowered to grant a permit under Chapter IV of that Act shall not, in deciding to grant or refuse a permit, be bound to take into consideration representations made by any person, authority or association other than the applicant, or to follow the procedure laid down in section 57, and may accept an application for a stage carriage permit or a public carrier's permit though made less than six weeks before the date on which it is desired that the permit shall have effect ;
- (d) The Provincial Government may exempt from all or any of the provisions of Chapter IV of that Act, all or any transport vehicles used or required for use in connection with work considered by the Provincial Government to be work connected with the defence of British India or the prosecution of war.]

Saving and temporary amendment of Act VIII of 1938.

7. (1) Notwithstanding anything contained in the Indian Tea Control Act, 1938, the Central Government may appoint any person to be an additional member of, and to act as Chairman of, the Indian Tea Licensing Committee during the continuance of this Act, and on such appointment being made and until this Act ceases to be in force, the Chairman of the said Committee elected under section 5 of that Act shall cease to exercise the functions of Chairman. VIII of 1938.

(2) If in pursuance of any scheme for the control of import of Indian tea into the United Kingdom, the Central Government considers it necessary or expedient so to do, it may by order direct the Indian Tea Licensing Committee to apportion

*Defence of India Act, 1939—contd.*

the requirement of the United Kingdom among the tea estates in accordance with such principles as may be laid down in the order, and the said Committee shall comply with such order.

VIII of  
1938.

(3) If at any time during the continuance of this Act, the agreement referred to in the preamble to the Indian Tea Control Act, 1938, is determined or otherwise ceases to be valid as between the parties thereto, the provisions of that Act shall, notwithstanding the said determination or invalidity of the agreement, continue in force :

VIII of  
1938.

Provided that nothing in this sub-section shall be construed as continuing the Indian Tea Control Act, 1938, in force after the 31st day of March, 1943.

CHAPTER III.

SPECIAL TRIBUNALS.

8. (1) The Provincial Government may for the whole or any part of the Province constitute Special Tribunals which shall consist of three members appointed by the Provincial Government.

Constitution  
of Special  
Tribunals.

(2) No person shall be appointed as a member of a Special Tribunal unless he—

26 Geo. 5, c. 2.

(a) is qualified under sub-section (3) of section 220 of the Government of India Act, 1935, for appointment as a Judge of a High Court ; or

V of 1935.

(b) has for a total period of not less than three years exercised, whether continuously or not, the powers under the Code of Criminal Procedure, 1898 (hereafter in this Chapter referred to as the Code), of any one or more of the following, namely :—

(i) Sessions Judge, Additional Sessions Judge, Chief Presidency Magistrate, Additional Chief Presidency Magistrate,

(ii) District Magistrate, Additional District Magistrate.

(3) At least one member of a Special Tribunal shall be qualified for appointment thereto under clause (a) of sub-section (2), and where only one member is so qualified under that clause, at least one other member shall be qualified for appointment under clause (b) of that sub-section by virtue of having exercised powers exclusive of those specified in sub-clause (ii) of the said clause (b).

*Defence of India Act, 1939—contd.***Jurisdiction of  
Special  
Tribunals.**

9. The Provincial Government may, by general or special order, direct that a Special Tribunal shall try any offence—

- (a) under any rule made under section 2, or
- (b) punishable with death, transportation or imprisonment for a term which may extend to seven years,

triable by any Court having jurisdiction within the local limits of the jurisdiction of the Special Tribunal, and may in any such order direct the transfer to the Special Tribunal of any particular case from any other Special Tribunal or any other Criminal Court not being a High Court.

**Procedure of  
Special  
Tribunals.**

10. (1) A Special Tribunal may take cognizance of offences without the accused being committed to it for trial.

(2) Save in cases of trials of offences punishable with death or transportation for life, it shall not be necessary in any trial for a Special Tribunal to take down the evidence at length in writing, but the Special Tribunal shall cause a memorandum of the substance of what each witness deposes to be taken down in the English language, and such memorandum shall be signed by a member of the Special Tribunal and shall form part of the record.

(3) A Special Tribunal shall not be bound to adjourn any trial for any purpose unless such adjournment is, in its opinion, necessary in the interests of justice.

(4) A Special Tribunal shall not, merely by reason of a change in its members, be bound to recall and rehear any witness who has given evidence, and it may act on the evidence already recorded by or produced before it.

(5) After an accused person has once appeared before it, a Special Tribunal may try him in his absence if, in its opinion, his absence has been brought about by the accused himself for the purpose of impeding the course of justice, or if the behaviour of the accused in Court has been such as, in the opinion of the Special Tribunal, to impede the course of justice.

(6) In the event of any difference of opinion among the members of a Special Tribunal, the opinion of the majority shall prevail.

(7) The Provincial Government may, by notification in the official Gazette, make rules providing for—

- (i) the times and places at which Special Tribunals may sit; and

*Defence of India Act, 1939—contd.*

- (ii) the procedure to be adopted in the event of any member of a Special Tribunal being prevented from attending throughout the trial of any accused person.

(8) A Special Tribunal shall, in all matters in respect to which no procedure has been prescribed by this Act or by rules made thereunder, follow the procedure prescribed by the Code for the trial of warrant cases by Magistrates.

11. In addition, and without prejudice, to any powers which a Special Tribunal may possess by virtue of any law for the time being in force to order the exclusion of the public from any proceedings, if at any stage in the course of a trial of any person before a Special Tribunal application is made by the prosecution, on the ground that the publication of any evidence to be given or of any statement to be made in the course of the trial would be prejudicial to the safety of the State, that all or any portion of the public shall be excluded during any part of the hearing, the Special Tribunal may make an order to that effect, but the passing of sentence shall in any case take place in public.

Exclusion of public from proceedings of Special Tribunals.

12. A Special Tribunal shall have all the powers conferred by the Code on a Court of Session exercising original jurisdiction.

Powers of Special Tribunals.

13. (1) A Special Tribunal may pass any sentence authorised by law.

Sentences of Special Tribunals.

(2) A person sentenced by a Special Tribunal—

- (a) to death or transportation for life, or
- (b) to imprisonment for a term extending to ten years under section 5 of this Act or under sub-section (4) of section 5 of the Indian Official Secrets Act, 1923, as amended by section 6 of this Act,

XIX of 1923.

shall have a right of appeal to the High Court within whose jurisdiction the sentence has been passed, but save as aforesaid and notwithstanding the provisions of the Code, or of any other law for the time being in force, or of anything having the force of law by whatsoever authority made or done, there shall be no appeal from any order or sentence of a Special Tribunal, and no Court shall have authority to revise such order or sentence, or to transfer any case from a Special Tribunal, or to make any order under section 491 of the Code, or have any jurisdiction of any kind in respect of any proceedings of a Special Tribunal.

(3) The powers conferred upon the Provincial Government and the Governor General by Chapter XXIX of the



*Defence of India Act, 1939—contd.*

Code shall apply in respect of a person sentenced by a Special Tribunal.

## CHAPTER IV.

## SUPPLEMENTAL.

Jurisdiction  
of ordinary  
Courts.

14. Save as otherwise expressly provided by or under this Act, the ordinary criminal and civil Courts shall continue to exercise jurisdiction.

Ordinary  
avocations of  
life to be  
interfered  
with as little  
as possible.

15. Any authority or person acting in pursuance of this Act shall interfere with the ordinary avocations of life and the enjoyment of property as little as may be consonant with the purpose of ensuring the public safety and interest and the defence of British India.

Savings as to  
orders.

16. (1) No order made in exercise of any power conferred by or under this Act shall be called in question in any Court.

(2) Where an order purports to have been made and signed by any authority in exercise of any power conferred by or under this Act, a Court shall, within the meaning of the Indian Evidence Act, 1872, presume that such order was so made by that authority. I of 1872.

Protection of  
action taken  
under the Act.

17. (1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

(2) Save as otherwise expressly provided under this Act, no suit or other legal proceeding shall lie against the Crown for any damage caused or likely to be caused by anything in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

Powers and  
functions and  
legal protec-  
tion of Indian  
State  
military and  
police forces  
and of Crown  
Representa-  
tive's police  
force when  
employed on  
military or  
police duties  
in British  
India.

<sup>1</sup>[18. When any members of the military or police forces of an Indian State or any members of a police force constituted under the authority of the Crown Representative are, with the authority of the Central or a Provincial Government, employed in British India on military or police duties, then—

(a) sections 128, 130 and 131 of the Code of Criminal Procedure, 1898, shall apply to officers, non-commissioned officers and men of an Indian State military force when so employed as if V of 1898.

<sup>1</sup> Subs., Defence of India (Amendment) Ordinance, 1942 (23 of 1942).

*Defence of India Act, 1939—contd.*

- they were officers, non-commissioned officers and soldiers respectively of His Majesty's Army ;
- (b) any provision of law for the time being in force which invests a police officer in British India with any status, power or function shall operate to invest a police officer of equivalent rank in an Indian State police force or in a police force constituted under the authority of the Crown Representative when so employed with the like status, power or function ; and for the purposes of the Code of Criminal Procedure, 1898, an officer in any such force not below the rank equivalent to that of a sub-inspector of police in British India shall be deemed to be an officer in charge of a police station ;
- (c) any provision of law for the time being in force which gives protection, whether specifically or otherwise, to members of His Majesty's military forces or of the police forces in British India from or in respect of any prosecution or other legal proceedings or from or in respect of any other liability shall apply also to members of an Indian State military force and to members of an Indian State police force or a police force constituted under the authority of the Crown Representative when so employed.]

V of 1898.

26 Geo. 5, c. 2. 19. (1) Where by or under any rule made under this Act any action is taken of the nature described in sub-section (2) of section 299 of the Government of India Act, 1935, there shall be paid compensation, the amount of which shall be determined in the manner, and in accordance with the principles, hereinafter set out, that is to say :—

Compensation to be paid in accordance with certain principles for compulsory acquisition of immovable property, etc.

- (a) Where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement.
- (b) Where no such agreement can be reached, the Central Government shall appoint as arbitrator a person qualified under sub-section (3) of section 220 of the above-mentioned Act for appointment as a Judge of a High Court.
- (c) The Central Government may, in any particular case, nominate a person having expert knowledge as to the nature of the property acquired, to assist the arbitrator, and where such nomination is made, the person to be compensated may also nominate an assessor for the said purpose.

*Defence of India Act, 1939—concl'd.*

- (d) At the commencement of the proceedings before the arbitrator, the Central Government and the person to be compensated shall state what in their respective opinions is a fair amount of compensation.
- (e) The arbitrator in making his award shall have regard to—
  - (i) the provisions of sub-section (1) of section 23 of the Land Acquisition Act, 1894, so far as <sup>1 of 1894.</sup> the same can be made applicable; and
  - (ii) whether the acquisition is of a permanent or temporary character.
- (f) An appeal shall lie to the High Court against an award of an arbitrator except in cases where the amount thereof does not exceed an amount prescribed in this behalf by rule made by the Central Government.
- (g) Save as provided in this section and in any rules made thereunder, nothing in any law for the time being in force shall apply to arbitrations under this section.

(2) The Central Government may make rules for the purpose of carrying into effect the provisions of this section.

(3) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe—

- (a) the procedure to be followed in arbitrations under this section;
- (b) the principles to be followed in apportioning the costs of proceedings before the arbitrator and on appeal;
- (c) the maximum amount of an award against which no appeal shall lie.

**Definition.**

**20.** In this Act, unless there is anything repugnant in the subject or context, the expression "Provincial Government" means, in relation to a Chief Commissioner's Province, the Chief Commissioner.

**Repeal and saving.**

**21.** The Defence of India Ordinance, 1939, is hereby <sup>Ord. V of 1939.</sup> repealed; and any rules made, anything done and any action taken in exercise of any power conferred by or under the said Ordinance shall be deemed to have been made, done or taken in exercise of powers conferred by or under this Act as if this Act had commenced on the 3rd day of September, 1939.

ACT No. XXXVI OF 1939.

THE INDIAN AIR FORCE VOLUNTEER RESERVE  
(DISCIPLINE) ACT, 1939.

(Received the assent of the Governor General on the 29th September,  
1939.)

*An Act to provide for the discipline of members of the Indian Air Force Volunteer Reserve raised in British India on behalf of His Majesty.*

WHEREAS it is expedient to provide for the discipline of members of the Indian Air Force Volunteer Reserve raised in British India on behalf of His Majesty ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Indian Air Force Volunteer Reserve (Discipline) Act, 1939.

Short title,  
extent and  
commence-  
ment.

(2) It extends to the whole of British India and applies to members of the Indian Air Force Volunteer Reserve wherever they may be.

(3) It shall come into force on such date<sup>1</sup> as the Central Government may, by notification in the official Gazette, appoint in this behalf.

2. The Central Government may make rules for the government, discipline and regulation of the Indian Air Force Volunteer Reserve.

Power to  
make rules  
for regula-  
tion of the  
Indian Air  
Force  
Volunteer  
Reserve.

3. Every member of the Indian Air Force Volunteer Reserve, while undergoing training in any unit, or otherwise in pursuance of rules made under section 2, or when called into actual service in the Indian Air Force in pursuance of the said rules, shall be subject to the Indian Air Force Act, 1932, in the same manner as a person belonging to His Majesty's Indian Air Force, and shall continue to be so subject until duly released from such training or service, as the case may be.

Liability to  
Indian Air  
Force Act,  
1932.

XIV of 1932

4. (1) If any member of the Indian Air Force Volunteer Reserve, when required, in pursuance of rules made under section 2, to join a unit or attend at any place for the purpose of undergoing training, fails without reasonable excuse to join or attend in accordance with such requirement, he shall be punishable with fine which may extend to two hundred rupees.

Penalty for  
failure to  
attend when  
required or  
called up.

(2) If any member of the Indian Air Force Volunteer Reserve, when called into actual service in the Indian Air

<sup>1</sup> The 6th January, 1940. See Notification No. 15, dated the 3rd January, 1940. Gazette of India, 1940. Pt. I, p. 14—Vol. LXX, p. 22.

*Indian Air Force Volunteer Reserve (Discipline) Act, 1939*—contd. *Registration (Emergency Powers) Act, 1940.*

Force, and required by such call to join any unit or attend at any place, fails without reasonable excuse to comply with such requirement at or within such time as the Central Government may, by order, direct, he shall be liable to be apprehended and punished in the same manner as a person in or belonging to the Indian Air Force deserting or improperly absenting himself from duty, except that the punishment shall not exceed imprisonment which may extend to two years.

Rule of  
evidence.

5. When any member of the Indian Air Force Volunteer Reserve is required, in pursuance of the rules made under section 2, to join any unit or attend at any place for the purpose of undergoing training, or is called into actual service in the Indian Air Force, a certificate purporting to be signed by an officer appointed in this behalf under the said rules and stating that the said member failed to join or attend in accordance with such requirement or call shall, without proof of the signature or appointment of such officer, be evidence of the matter stated therein.

Jurisdiction.

6. No Court inferior to that of a Presidency Magistrate or Magistrate of the first class shall try an offence punishable under sub-section (1) of section 4.

Repeal and  
saving.

7. The Indian Air Force Volunteer Reserve (Discipline) Ordinance, 1939, is hereby repealed; and any rules made, anything done and any action taken under the said Ordinance shall be deemed to have been made, done or taken under this Act as if this Act had commenced on the 16th day of September, 1939.

Ord. No. VII  
of 1939.

## ACT No. I OF 1940.

THE REGISTRATION (EMERGENCY POWERS) ACT,  
1940.

(Received the assent of the Governor General on the 23rd February, 1940.)

*An Act to provide for the registration of certain European British subjects.*

WHEREAS it is expedient to provide for the registration of certain European British subjects;

It is hereby enacted as follows:—

1. (1) This Act may be called the Registration (Emergency Powers) Act, 1940,

Short title,  
extent,  
commence-  
ment and  
duration.

*Registration (Emergency Powers) Act, 1940—contd.*

(2) It extends to the whole of British India, and applies also to European British subjects in any part of India.

(3) It shall come into force on such <sup>1</sup>date as the Central Government may, by notification in the official Gazette, appoint.

(4) It shall be in force during the continuance of the present war and for a period of six months thereafter.

2. In this Act, unless there is anything repugnant in the Definitions, subject or context,—

(a) “European British subject” means any subject of His Majesty of European descent in the male line, born, naturalised or domiciled in the British Islands or in any Dominion as defined in the Statute of Westminster, 1931, or in any Colony except Ceylon ;

(b) “prescribed” means prescribed by rules made under this Act.

3. (1) Every male European British subject for the time being in India (not being—

<sup>Obligation to register.</sup>

(a) a member of His Majesty’s naval, military or air forces, or

(b) a person who is enrolled under the Auxiliary Force Act, 1920, or is in holy orders, or is a regular minister of any religious denomination),

who for the time being has attained the age of sixteen years but has not attained the age of fifty years, shall, within the prescribed period, correctly fill up, or cause so to be filled up, to the best of his knowledge and belief, sign and lodge with the appropriate registration authority specified in the First Schedule, or such other registration authority as may be prescribed, the form set out in the Second Schedule, and if any such European British subject claims not to be ordinarily resident in India, he shall lodge with the said form a statement of such claim.

(2) If any registration authority has reason to believe that any person is a European British subject to whom the provisions of sub-section (1) are applicable, he may, by order in writing, require such person to furnish such particulars as may be specified in the order within such time as may be so specified, and such person, whether or not he is a European

Geo. 5, c. 4.

IX of  
20.

<sup>1</sup> The 27th February, 1940, see Notification No. 129-M. P., dated the 26th February, 1940. Gazette of India, Extraordinary, dated the 26th February, 1940—Vol. III, p. 26.

*Registration (Emergency Powers) Act, 1940—contd.*

British subject to whom the provisions of the said sub-section are applicable, shall within the specified time furnish correctly to the best of his knowledge and belief the said particulars to the said registration authority in such form or manner as such order may require, and shall sign the same; and if any such person claims that he is not a European British subject to whom the provisions of sub-section (1) are applicable, he shall furnish a statement of such claim with the particulars as aforesaid.

(3) If any person refuses or, without lawful excuse (the burden of proving which shall lie upon such person), neglects fully to comply with the requirements of sub-section (1) or of any order made under sub-section (2), he shall be punishable with fine which may extend to five hundred rupees.

(4) Every registration authority under this Act shall be deemed to be a public servant within the meaning of the Indian Penal Code. XLV of 1860.

Determination  
of disputes  
as to appli-  
cability of  
this Act.

4. If any question arises with reference to this Act or any rule made thereunder whether a person is a European British subject to whom the provisions of sub-section (1) of section 3 are applicable, a person appointed in writing in this behalf by the prescribed authority may apply to the District Magistrate or to any officer specially empowered in this behalf by the Central Government in the area in which the person to whom the dispute relates is for the time being present, and such Magistrate or other officer, after hearing such person or giving him a reasonable opportunity for being heard, shall summarily determine the question, and the decision of such Magistrate or other officer shall be final.

Power of  
Central  
Government  
to make  
rules.

5. (1) The Central Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

- (a) prescribe registration authorities, in addition to those specified in the First Schedule;
- (b) prescribe the time within which the form set out in the Second Schedule shall be lodged with the registration authority;
- (c) prescribe authorities who may make the appointment referred to in section 4;
- (d) provide for the issue of certificates of registration;

*Registration (Emergency Powers) Act, 1940—contd.*

(e) provide for the preparation, compilation and correction of a register, and require the attendance of persons for any of such purposes ;

(f) require the notification of changes of address of registered persons.

(3) Rules made under this section may provide that any contravention thereof or of any order or notice issued thereunder shall be punishable with fine which may extend to five hundred rupees.

6. Nothing in this Act shall apply to any person confined for the time being in a prison or lunatic asylum.

Act not to apply to certain persons.

7. The Registration Ordinance, 1939, is hereby repealed ; but any rules made, anything done and any action taken under the said Ordinance shall be deemed to have been made, done or taken under the corresponding provisions of this Act, and any offence committed against or any proceedings commenced under the said Ordinance, may be punished, or may be continued and completed as if such offence were committed against or such proceedings were commenced under this Act.

Repeal of Ordinance II 1939.

## THE FIRST SCHEDULE.

(See section 3.)

### *Registration Authorities.*

In the case of any servant of the Crown.	The Head of the Office or Department in which he serves.
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In the case of any person in the employ of any public or local authority.	The chief executive officer of such authority.
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In the case of any person in the employ of any railway.	The Head of the Railway Administration.
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In any other case . . . .	The District Magistrate of the district in which the person is for the time being resident, or in the case of a person resident in a Presidency-town, the Commissioner of Police.
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*Registration (Emergency Powers) Act, 1940.—concl'd.*  
*Foreigners Act, 1940.*

THE SECOND SCHEDULE.

(See section 3.)

*Form of Particulars.*

1. Name in full.
2. Address.
3. Date of birth.
4. Whether single, married or widower.
5. Number of dependents, specifying their relationship, if any, to him.
6. Profession or occupation.
7. Name and nature of business, or name, address and nature of employer's business, or if employed in or under any Department of Government, the name of the Department.
8. Whether he has served, or undergone training of any description, in any naval, military or air force. If so, give particulars of such service or training including date and duration thereof.

Whether he possesses, or has possessed, a flying licence.

ACT No. II OF 1940.

THE FOREIGNERS ACT, 1940.

(Received the assent of the Governor General on the 23rd February, 1940.)

*An Act to provide for the imposition of restrictions on foreigners*

WHEREAS it is expedient to provide for the imposition of restrictions on the entry of foreigners into British India, their presence therein and their departure therefrom;

It is hereby enacted as follows:—

1. (1) This Act may be called the Foreigners Act, 1940.
- (2) It extends to the whole of British India.
- (3) It shall be in force during the continuance of the present war and for a period of six months thereafter.

Short title,  
extent and  
duration.

2. In this Act,—

Definitions.

- (a) "foreigner" has the meaning assigned to it in the Foreigners Act, 1864, except that it does not include—

- (i) any ruler or subject of any Indian State; or
- (ii) any native of the tribal areas;

<sup>1</sup> For application of the Act to different areas see Vol. III, pp. 28, 29, 259, 260 and 269.

*Foreigners Act, 1940—contd.*

(b) “prescribed” means prescribed by orders made under this Act ;

(c) “specified” means specified by direction of a prescribed authority.

3. (1) The Central Government may, by order, make provision, either generally with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigner, for prohibiting, regulating or restricting the entry of foreigners into British India or their departure therefrom or their presence or continued presence therein. Power to make orders.

(2) In particular, and without prejudice to the generality of the foregoing power, orders made under this section may provide that the foreigner—

(a) shall not enter British India, or shall enter British India only at such times and by such route and at such port or place and subject to the observance of such conditions on arrival as may be prescribed ;

(b) shall not depart from British India, or shall depart only at such times and by such route and from such port or place and subject to the observance of such conditions on departure as may be prescribed ;

(c) shall not remain in British India, or in any prescribed area therein ;

(d) shall remove himself to, and remain in, such area in British India as may be prescribed ;

(e) shall comply with such conditions as may be prescribed or specified—

(i) requiring him to reside in a particular place ;

(ii) imposing any restrictions on his movements ;

(iii) requiring him to furnish such proof of his identity and to report such particulars to such authority in such manner and at such time and place as may be prescribed or specified ;

(iv) requiring him to allow his photograph and finger impressions to be taken and to furnish specimens of his hand-writing and signature to such authority and at such time and place as may be prescribed or specified ;

(v) prohibiting him from association with persons of a prescribed or specified description ;

*Foreigners Act, 1940—contd.*

- (vi) prohibiting him from engaging in activities of a prescribed or specified description ;
- (vii) prohibiting him from using or possessing prescribed or specified articles ; or
- (viii) otherwise regulating his conduct in any such particular as may be prescribed or specified ;
- (f) shall enter into a bond with or without sureties for the due observance of, or as an alternative to the enforcement of, any or all prescribed or specified restrictions or conditions ; or
- (g) shall be arrested and detained or confined ;

and may make provision for such incidental and supplementary matters as may, in the opinion of the Central Government, be expedient or necessary for giving effect to this Act.

**Internees.**

4. (1) Any foreigner (hereinafter referred to as an internee) in respect of whom there is in force any order made under clause (g) of sub-section (2) of section 3, directing that he be detained or confined, shall be detained or confined in such place and manner and subject to such conditions as to maintenance, discipline and the punishment of offences and breaches of discipline as the Central Government may from time to time determine.

(2) No person shall—

- (a) knowingly assist an internee to escape from custody or knowingly harbour an escaped internee ; or
- (b) give an escaped internee any assistance with intent thereby to prevent, hinder or interfere with the apprehension of the internee.

(3) The Central Government may, by order, provide for regulating access to, and the conduct of persons in, places in British India where internees are detained and for prohibiting or regulating the despatch or conveyance from outside such places to or for internees therein of such articles as may be prescribed.

(4) No proceedings shall be taken by virtue of sub-section (2) or sub-section (3) against any person in respect of any act done by him when he is himself an internee.

5. (1) No foreigner who was in British India on the date on which this Act came into force shall, while in British India after that date, assume or use or purport to assume or use for any purpose any name other than that by which he was ordinarily known immediately before the said date.

*Foreigners Act, 1940—contd.*

(2) Where, after the date on which this Act came into force, any foreigner carries on or purports to carry on (whether alone or in association with any other person) any trade or business under any name or style other than that under which that trade or business was being carried on immediately before the said date, he shall, for the purposes of sub-section (1), be deemed to be using a name other than that by which he was ordinarily known immediately before the said date.

(3) In relation to any foreigner who, not having been in British India on the date on which this Act came into force, thereafter enters British India, sub-sections (1) and (2) shall have effect as if for any reference in those sub-sections to the date on which this Act came into force there were substituted a reference to the date on which he first enters British India thereafter.

(4) For the purposes of this section—

- (a) the expression “ name ” includes a surname, and
- (b) a name shall be deemed to be changed if the spelling thereof is altered.

(5) Nothing in this section shall apply to the assumption or use—

- (a) of any name in pursuance of a Royal licence ; or
- (b) by any married woman, of her husband’s name.

6. Any District Magistrate and any Commissioner of Police or, where there is no Commissioner of Police, any Superintendent of Police, may, for any purpose connected with the enforcement of this Act or any order made thereunder, enter, with such assistance as he may think fit, any vessel or aircraft at any port or place in British India and may—

Obligations  
of masters  
of vessels,  
etc.

- (a) direct the master of the vessel or the pilot of the aircraft, as the case may be,—

- (i) before any passenger disembarks, or before the vessel or aircraft leaves such port or place, as the case may be, to furnish a list in writing of the passengers who are on board or who have been carried on board at any time since the vessel or aircraft commenced its journey, or who have signified their intention of departing from British India on board such vessel or aircraft, setting out the ports or places at which they embarked, the ports or places of their disembarkation or intended

*Foreigners Act, 1940—contd.*

disembarkation, and such other particulars as may be prescribed, and

- (ii) to answer to the best of his ability any question relating to the passengers who are on board or who have disembarked in any part of British India ; and

- (b) if any foreigner seeking to enter British India on board such vessel or aircraft does not give satisfactory reasons for entering British India, either—

- (i) refuse to allow such foreigner to disembark from such vessel or aircraft, or

- (ii) place him under such restraint as may be prescribed or specified.

Burden of proof.

7. If any question arises with reference to this Act or any order made or direction given thereunder, whether any person is or is not a foreigner or is or is not a foreigner of a particular class or description, the onus of proving that such person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall, notwithstanding anything contained in the Indian Evidence Act, 1872, lie upon such person.

I of 1872.

Power to exempt from application of Act.

8. The Central Government may, by order, declare that any or all of the provisions of this Act or the orders made thereunder shall not apply, or shall apply only with such modifications or subject to such conditions as may be specified, to or in relation to any individual foreigner or any class or description of foreigner.

Power to give effect to orders, directions, etc.

9. (1) Any authority empowered by or under or in pursuance of the provisions of this Act to give any direction or to exercise any other power, may, in addition to any other action expressly provided for in this Act, take, or cause to be taken, such steps and use, or cause to be used, such force as may, in its opinion, be reasonably necessary for securing compliance with such direction or for preventing or rectifying any breach thereof, or for the effective exercise of such power, as the case may be.

(2) Any police officer may take such steps and use such force as may, in his opinion, be reasonably necessary for securing compliance with any order made or direction given under or in pursuance of the provisions of this Act or for preventing or rectifying any breach of such order or direction.

(3) The power conferred by this section shall be deemed to confer upon any person acting in exercise thereof a right of access to any land or other property whatsoever.

*Foreigners Act, 1940—contd.*

10. Any authority upon which any power to make or give any direction, consent or permission or to do any other act is conferred by this Act or by any order made thereunder may, unless express provision is made to the contrary, in writing authorise, conditionally or otherwise, any authority subordinate to it to exercise such power on its behalf, and thereupon the said subordinate authority shall, subject to such conditions as may be contained in the authorisation, be deemed to be the authority upon which such power is conferred by or under this Act.

Power to  
(delegate  
authority.

11. (1) Any person who attempts to contravene, or abets, or attempts to abet, or does any act preparatory to, a contravention of, the provisions of this Act or of any order made or direction given thereunder, or fails to comply with any direction given in pursuance of any such order, shall be deemed to have contravened the provisions of this Act.

Attempts,  
etc., to  
contravene  
the provisions  
of this Act, etc.

(2) Any person who, knowing or having reasonable cause to believe that any other person has contravened the provisions of this Act or of any order made or direction given thereunder, gives that other person any assistance with intent thereby to prevent, hinder or otherwise interfere with his arrest, trial or punishment for the said contravention, shall be deemed to have abetted that contravention.

(3) The master of any vessel or the pilot of any aircraft, as the case may be, by means of which any foreigner enters or leaves British India in contravention of any order made under, or direction given in pursuance of, section 3 shall, unless he proves that he exercised all due diligence to prevent the said contravention, be deemed to have contravened this Act.

12. If any person contravenes the provisions of this Act or of any order made thereunder, or any direction given in pursuance of this Act or such order, he shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine ; and if such person has entered into a bond in pursuance of clause (f) of sub-section (2) of section 3, his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof, or show cause to the satisfaction of the convicting Court why such penalty should not be paid.

Penalties.

13. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

Protection  
to persons  
acting under  
this Act.

14. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of the Foreigners Act, 1864, the Registration of Foreigners Act, 1939, and of any other enactment for the time being in force.

Application  
of other  
laws not  
barred.

*Foreigners Act, 1940—concl'd. Royal Indian Navy (Extension of Service) Act, 1940.*

Repeal and  
saving.

15. (1) The Foreigners Ordinance, 1939, is hereby repealed. Ord. I of 1939.

(2) Notwithstanding such repeal, all orders made, directions given, things done and action taken under the said Ordinance, shall be deemed to have been made, given, done or taken under the provisions of this Act as if this Act had come into force on the 26th day of August, 1939, references to the said Ordinance in any rule made under any enactment shall be construed as references to this Act, and offences committed against or proceedings commenced under the said Ordinance may be punished or may be continued and completed as if such offences were committed against or such proceedings were commenced under this Act.

ACT No. III OF 1940.

THE ROYAL INDIAN NAVY (EXTENSION OF SERVICE) ACT, 1940.

*(Received the assent of the Governor General on the 23rd February, 1940.)*

*An Act to provide for the retention in service of certain persons enrolled for service in the Royal Indian Navy.*

WHEREAS it is expedient to provide for the retention in service of certain persons enrolled for service in the Royal Indian Navy ;

It is hereby enacted as follows :—

Short title.

1. This Act may be called the Royal Indian Navy (Extension of Service) Act, 1940.

Extension  
of service  
where term  
of service  
has expired.

2. (1) Until such date as may be notified by the Central Government as the date of termination of the present hostilities, any person enrolled for service in the Royal Indian Navy who, by reason of the expiry of the term for which he engaged to serve when so enrolled, is no longer liable for service shall, notwithstanding such expiry, continue to be enrolled for service and to be liable for service in the Royal Indian Navy until he is discharged by order of the Officer Commanding the Royal Indian Navy :

Provided that the period for which the service of any such person is extended under this section shall not exceed five years from the day on which his service would otherwise have terminated.

(2) The provisions of the section shall apply also to any person enrolled for service in the Royal Indian Navy if the expiry of the term for which he engaged to serve occurred between the 2nd day of September, 1939, and the commencement of this Act.

THE EXCESS PROFITS TAX ACT, 1940.

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## ACT No. XV OF 1940.

*(Received the assent of the Governor General on the 6th April, 1940.)*

*An Act to impose a tax on excess profits arising out of certain businesses.*

WHEREAS it is expedient to impose a tax on excess profits arising out of certain businesses in the conditions prevailing during the present hostilities ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Excess Profits Tax Act, 1940.

(2) It extends to the whole of British India.

(3) It shall come into force on such <sup>2</sup>date as the Central Government may, by notification in the official Gazette, appoint.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) “ accounting period ” in relation to any business means—

(a) where the accounts of the business are made up for successive periods of twelve months, each of such periods ;

<sup>1</sup> For application of the Act to different areas, see Vol. III, p. 54.

<sup>2</sup> The 13th April, 1940, see Notification No. 8, dated the 13th April, 1940, Gazette of India, 1940, Pt. I, p. 499, Vol. III, p. 54.

Short title,  
extent and  
commence-  
ment.

Definitions.

*Excess Profits Tax Act, 1940—contd.*

- (b) in any other case, such period as the Excess Profits Tax Officer may determine :

Provided that in determining any accounting period under sub-clause (b) the Excess Profits Tax Officer shall have regard to the period, if any, which is, or has been, determined as the previous year for that business for the purposes of the Indian Income-tax Act, 1922 ;

XI of 1222.

(2) " Appellate Assistant Commissioner " means a person appointed to be an Appellate Assistant Commissioner of Excess Profits Tax under section 3 ;

(3) " average amount of capital " means the average amount of capital employed in any business as computed in accordance with the Second Schedule ;

(4) " Board of Referees " means a Board of Referees appointed under section 3 ;

(5) " business " includes any trade, commerce or manufacture or any adventure in the nature of trade, commerce or manufacture or any profession or vocation, but does not include a profession carried on by an individual or by individuals in partnership if the profits of the profession depend wholly or mainly on his or their personal qualifications unless such profession consists wholly or mainly in the making of contracts on behalf of other persons or the giving to other persons of advice of a commercial nature in connection with the making of contracts :

Provided that where the functions of a company or of a society incorporated by or under any enactment consist wholly or mainly in the holding of investments or other property, the holding of the investments or property shall be deemed for the purpose of this definition to be a business carried on by such company or society :

Provided further that all businesses to which this Act applies carried on by the same person shall be treated as one business for the purposes of this Act ;

(6) " chargeable accounting period " means—

(a) any accounting period falling wholly within the term beginning on the 1st day of September, 1939, and ending on the 31st day of March, <sup>1</sup>[1943], and

(b) where any accounting period falls partly within and partly without the said term, such part of that accounting period as falls within the said term ;

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<sup>1</sup> Subs., Indian Finance Act, 1942 (12 of 1942).

*Excess Profits Tax Act, 1940—contd.*

(7) "Commissioner" means a person appointed to be a Commissioner of Excess Profits Tax under section 3 ;

(8) "company" means a company as defined in the Indian Companies Act, 1913, or formed in pursuance of an Act of Parliament or of Royal Charter or Letters Patent, or of an Act of the Legislature of a British possession or of a law of an Indian State, and includes any foreign association whether incorporated or not which the Central Board of Revenue may, by general or special order, declare to be a company for the purposes of this Act ;

(9) "deficiency of profits" means—

- (i) where profits have been made in any chargeable accounting period, the amount by which such profits fall short of the standard profits ;
- (ii) where a loss has been made in any chargeable accounting period, the amount of the loss added to the amount of the standard profits ;

(10) "director" includes any person occupying the position of a director by whatever name called and also includes any person who—

- (i) is a manager of the company or concerned in the management of the business ; and
- (ii) is remunerated out of the funds of the business ; and
- (iii) is the beneficial owner of not less than twenty per cent. of the ordinary share capital of the company ;

(11) "dividend" has the meaning assigned to the expression in section 2 of the Indian Income-tax Act, 1922 ;

XI of 1922.

(12) "Excess Profits Tax Officer" means a person appointed to be an Excess Profits Tax Officer under section 3 ;

(13) "income" has the meaning assigned to the expression in section 2 of the Indian Income-tax Act, 1922 ;

XI of 1922.

(14) "fixed rate" in relation to dividends on share capital other than ordinary share capital, includes a rate fluctuating in accordance with the maximum rate of income-tax ;

(15) "Inspecting Assistant Commissioner" means a person appointed to be an Inspecting Assistant Commissioner of Excess Profits Tax under section 3 ;

(16) "loss" means a loss computed in the same manner as, for the purposes of this Act, profits are to be computed ;

<sup>1</sup>[(16A) "ordinary share capital" has the meaning assigned to that expression in sub-section (8) of section 9 ;]

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<sup>1</sup> Ins., Excess Profits Tax (Amendment) Act, 1941 (11 of 1941).

*Excess Profits Tax Act, 1940—contd.*

(17) "person" includes a Hindu undivided family ;

(18) "prescribed" means prescribed by rules made under this Act ;

(19) "profits" means profits as determined in accordance with the First Schedule ;

(20) "standard profits" means standard profits as computed in accordance with the provisions of section 6 ;

(21) "statutory percentage" means—

(a) in relation to a business carried on by a body corporate (other than a company the directors whereof have a controlling interest therein), eight per cent. per annum ;

<sup>1</sup>(b) in relation to a business carried on by a partnership of which one or more of the partners is a body corporate (other than a company the directors whereof have a controlling interest therein), such a rate per cent. as is equivalent to—

(i) eight per cent. per annum on so much of the average amount of the capital employed in the business during the chargeable accounting period as represents the share of any such body corporate, and

(ii) ten per cent. per annum on the remainder of that amount ;

(c) in relation to a business to which neither sub-clause (a) nor sub-clause (b) applies, ten per cent. per annum :]

Provided that in relation to any decrease of capital the statutory percentage shall be in all cases six per cent. :

Provided further that where the business was commenced on or after the 1st day of July, 1938, the foregoing percentages shall be increased from eight, ten and six per cent. to ten, twelve and eight per cent., respectively ;

(22) "written down value" has the meaning assigned to that expression in sub-section (5) of section 10 of the Indian Income-tax Act, 1922.

XI of 1922.

3. (1) There shall be the following classes of excess profits tax authorities for the purposes of this Act, namely :—

Excess profits  
tax authorities.

(a) the Central Board of Revenue ;

(b) Commissioners of Excess Profits Tax ;

<sup>1</sup> Subs., Excess Profits Tax (Amendment) Act, 1940 (42 of 1940).

*Excess Profits Tax Act, 1940—contd.*

- (c) Assistant Commissioners of Excess Profits Tax, who may be either Appellate Assistant Commissioners of Excess Profits Tax or Inspecting Assistant Commissioners of Excess Profits Tax ;
- (d) Excess Profits Tax Officers ;
- (e) Boards of Referees.

(2) Every Commissioner of Excess Profits Tax, Appellate Assistant Commissioner of Excess Profits Tax, Inspecting Assistant Commissioner of Excess Profits Tax and Excess Profits Tax Officer shall be a person who is exercising the functions of Commissioner of Income-tax, Appellate Assistant Commissioner of Income-tax, Inspecting Assistant Commissioner of Income-tax and Income-tax Officer, respectively, under the Indian Income-tax Act, 1922.

XI of 1922.

(3) The Central Board of Revenue shall, subject to the provisions of sub-section (2), appoint such persons as Commissioners of Excess Profits Tax, Appellate Assistant Commissioners of Excess Profits Tax, Inspecting Assistant Commissioners of Excess Profits Tax and Excess Profits Tax Officers as it thinks fit and such persons shall perform their functions in respect of such cases as the Central Board of Revenue may assign to them :

Provided that such directions shall be made entirely at the discretion of the Central Board of Revenue, and, in particular, it shall be competent for that Board to assign a case or class of cases to an officer who is not exercising in respect of that case or class of cases the corresponding functions in relation to the charge of income-tax under the Indian Income-tax Act, 1922.

XI of 1922.

(4) All officers and persons employed in the execution of this Act shall observe and follow the orders, instructions and directions of the Central Board of Revenue :

Provided that nothing in this sub-section applies to a Board of Referees :

Provided further that no such orders, instructions or directions shall be given so as to interfere with the discretion of the Appellate Assistant Commissioner in the exercise of his appellate functions.

(5) A Board of Referees shall consist of not less than three and not more than five persons, of whom not less than one-half shall be non-officials having business experience, and one shall be a judicial officer who has exercised the powers of a District Judge or who possesses such qualifications as are normally required for appointment to the post of District Judge, and who has held judicial office for a period of not less than ten years.

*Excess Profits Tax Act, 1940—contd.*

(6) Subject to the provisions of sub-section (5), the Central Government may make rules regulating the formation, composition and procedure of Boards of Referees.

4. <sup>1</sup>[(1)] Subject to the provisions of this Act, there shall, <sup>charge of tax.</sup> in respect of any business to which this Act applies, be charged, levied and paid on the amount by which the profits during any chargeable accounting period exceed the standard profits a tax (in this Act referred to as "excess profits tax") which shall, in respect of any chargeable accounting period ending on or before the 31st day of March, 1941, be equal to fifty per cent. of that excess and shall, in respect of any chargeable accounting period beginning after that date, be equal to such percentage of that excess as may be fixed by the annual Finance Act :

XI of 1922.

Provided that any profits which are, under the provisions of sub-section (3) of section 4 of the Indian Income-tax Act, 1922, exempt from income-tax, and all profits from any business of life insurance shall be totally exempt from excess profits tax under this Act.

<sup>2</sup>[(2)] Where a chargeable accounting period falls partly before and partly after the end of March, 1941, the foregoing provisions of this section shall apply as if so much of that chargeable accounting period as falls before, and so much of that chargeable accounting period as falls after, the said end of March were each a separate chargeable accounting period, <sup>3</sup>[and as if the excess of profits of that separate chargeable accounting period were an apportioned part of the excess of profits arising in the whole period determined in accordance with the provisions of section 7A].]

XI of 1922.

5. This Act shall apply to every business of which any <sup>Application of Act.</sup> part of the profits made during the chargeable accounting period is chargeable to income-tax by virtue of the provisions of sub-clause (i) or sub-clause (ii) of clause (b) of sub-section (1) of section 4 of the Indian Income-tax Act, 1922, or of clause (c) of that sub-section :

Provided that this Act shall not apply to any business the whole of the profits of which accrue or arise without British India where such business is carried on by or on behalf of a person who is resident but not ordinarily resident in British India unless the business is controlled in India :

Provided further that where the profits of a part only of a business carried on by a person who is not resident in British

<sup>1</sup> Re-numbered, Excess Profits Tax (Amendment) Act, 1941 (11 of 1941).

<sup>2</sup> Add. *ibid.*

<sup>3</sup> Subs., Excess Profits Tax (Second Amendment) Act, 1941 (24 of 1941).

*Excess Profits Tax Act, 1940—contd.*

India or not ordinarily so resident accrue or arise in British India or are deemed under the Indian Income-tax Act, 1922, <sup>XI of 1922.</sup> so to accrue or arise, then, except where the business being the business of a person who is resident but not ordinarily resident in British India is controlled in India, this Act shall apply only to such part of the business, and such part shall for all the purposes of this Act be deemed to be a separate business :

<sup>1</sup>[Provided further that this Act shall not apply to any business the whole of the profits of which accrue or arise in an Indian State ; and where the profits of a part of a business accrue or arise in an Indian State, such part shall, for the purposes of this provision, be deemed to be a separate business the whole of the profits of which accrue or arise in an Indian State, and the other part of the business shall, for all the purposes of this Act, be deemed to be a separate business.]

Standard  
profits.

6. (1) For the purposes of this Act, the standard profits of a business in relation to any chargeable accounting period shall, subject to the provisions of sub-sections (3) and (4), be an amount bearing to the profits of the business during the standard period, if in respect of that business a standard period is available, the same proportion as the chargeable accounting period bears to the standard period :

Provided that if the average amount of capital employed in the business during such chargeable accounting period is greater or less than the average amount of capital employed during the standard period, such amount shall be increased or decreased, as the case may be, by an amount calculated by applying the statutory percentage to the amount of such increase or decrease :

Provided further that in the case of a business which was commenced on or after the 31st day of March, 1936, the standard profits shall, at the option of the person carrying on the business, be an amount calculated by applying the statutory percentage to the average amount of capital employed in the business during such chargeable accounting period.

(2) For the purposes of this section the standard period shall, at the option of the person carrying on the business, be—

- (a) the “ previous year ” as determined under section 2 of the Indian Income-tax Act, 1922, for the <sup>XI of 1922.</sup> purpose of the income-tax assessment for the year

<sup>1</sup> Added, Excess Profits Tax (Second Amendment) Act, 1941 (24 of 1941).

*Excess Profits Tax Act, 1940—contd.*

ending on the 31st day of March, 1937, or the previous year as so determined for the year ending on the 31st day of March, 1938; or

- (b) the “previous year” as so determined for the year ending on the 31st day of March, 1937, and that for the year ending on the 31st day of March, 1939; or
- (c) the “previous year” as so determined for the year ending on the 31st day of March, 1938, and that for the year ending on the 31st day of March, 1939; or
- (d) the “previous year” as so determined for the year ending on the 31st day of March, 1939, and that for the year ending on the 31st day of March, 1940:

Provided that in no case shall any period of less than nine months be taken as a standard period.

(3) If, within the period specified in the notice issued under sub-section (1) of section 13 <sup>1</sup>[or within the extended period allowed by the Excess Profits Tax Officer under the proviso to that sub-section], the person carrying on the business makes an application to the Excess Profits Tax Officer in this behalf, the Excess Profits Tax Officer shall refer the application to the Board of Referees, and if the Board is satisfied that during the standard period the profits of the business were less than might at the beginning of that period have been reasonably expected, it may direct that the standard profits shall be computed as if the profits during the standard period were such greater amount as it thinks just:

Provided that such amount shall not exceed the statutory percentage of the average amount of the capital employed in the business unless the Board is satisfied that owing to some specific cause peculiar to the business it is just that a greater amount should be allowed:

<sup>2</sup>[Provided further that a determination on an application under this sub-section—

- (a) shall have effect with respect to all subsequent chargeable accounting periods;
- (b) shall exclude any further application under this sub-section.]

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<sup>1</sup> Ins., Excess Profits Tax (Amendment) Act, 1940 (42 of 1940).

<sup>2</sup> Added. .b.d



*Excess Profits Tax Act, 1940—contd.*

(4) The standard profits shall be taken to be rupees thirty-six thousand in any case in which the standard profits computed in accordance with sub-section (1) are less than this sum :

Provided that if the chargeable accounting period is greater or less than one year the sum of rupees thirty-six thousand shall for the purpose of this sub-section be increased or decreased proportionately.

(5) Where the standard period includes any period prior to the commencement of Part III of the Government of India Act, 1935, during which Burma was part of British India, there shall, in computing the standard profits of a business under this section, be excluded from the profits of the business during the standard period so much of such profits as arose or accrued or were received in Burma unless such profits are also included in the profits of the business during the chargeable accounting period.

Relief on  
occurrence of  
deficiency of  
profits.

7. Where a deficiency of profits occurs in any chargeable accounting period in any business, the profits of the business chargeable with excess profits tax shall be deemed to be reduced and relief shall be granted in accordance with the following provisions :—

(a) the aggregate amount of the profits so chargeable for the previous chargeable accounting periods shall be deemed to be reduced by the amount of the deficiency of profits and the amount of excess profits tax payable in respect thereof shall be deemed to be reduced accordingly and the relief necessary to give effect to the reduction shall be given by repayment or otherwise ;

(b) where the amount of the deficiency of profits exceeds the aggregate amount of the profits so chargeable for the previous chargeable accounting periods, or where there is no previous chargeable accounting period, the balance of the deficiency of profits or the whole of the deficiency, as the case may be, shall be applied in reducing any profits so chargeable for the next subsequent chargeable accounting period, and if and so far as it exceeds the amount of those profits, any profits so chargeable for the next subsequent chargeable accounting period and so on:

<sup>1</sup> Provided that a deficiency of profits occurring in a chargeable accounting period beginning on or after the 1st day of April, 1941, shall first be applied so as to reduce profits

<sup>1</sup> Added, Excess Profits Tax (Amendment) Act, 1941 (11 of 1941).

*Excess Profits Tax Act, 1940—contd.*

chargeable to tax arising in another chargeable accounting period beginning on or after the said 1st day of April, and a deficiency of profits occurring in a chargeable accounting period ending on or before the 31st day of March, 1941, shall first be applied so as to reduce profits chargeable to tax arising in another chargeable accounting period ending on or before the said 31st day of March; and where owing to an insufficiency of profits for chargeable accounting periods ending on or before the said 31st day of March, or, as the case may be, beginning on or after the said 1st day of April, the whole or any part of the deficiency is applied otherwise than as aforesaid,—

- (a) the application shall be treated as provisional only; and
- (b) if it thereafter appears that there is no longer such an insufficiency as aforesaid, such adjustment shall be made as the Central Board of Revenue may by written order direct:

Provided further that where a chargeable accounting period falls partly before and partly after the end of March, 1941, the provisions of the preceding proviso shall apply as if so much of the chargeable accounting period as falls before, and so much of the chargeable accounting period as falls after, the said end of March, were each a separate chargeable accounting period, and as if the deficiency of profits of that separate chargeable accounting period were an apportioned part of the deficiency of profits occurring in the whole period; and any apportionment required to be made by this proviso shall be made by reference to the number of months or fractions of months in each of the parts of the whole chargeable accounting period.]

<sup>1</sup>[7A. (1) In the case of a chargeable accounting period such as is referred to in sub-section (2) of section 4, the excess of profits of each of the separate chargeable accounting periods into which the whole chargeable period is deemed to be divided for the purposes of that sub-section, shall be determined in accordance with the provisions of sub-sections (2), (3) and (4), and in those sub-sections—

Special provision for chargeable accounting period falling partly before and partly after the end of March, 1941.

- (a) references to the whole period, the first part of the period, and the second part of the period shall be construed, respectively, as references to the whole of the chargeable accounting period deemed to be divided, so much thereof as falls before the end of March, 1941, and so much thereof as falls after the said end of March;

<sup>1</sup> Ins., Excess Profits Tax (Second Amendment) Act, 1941 (24 of 1941).

*Excess Profits Tax Act, 1940—contd.*

(b) “excess profits” means the amount by which the profits for any period exceed the standard profits for that period.

(2) The profits or loss of, and the standard profits for, the whole period shall be computed first on the basis that rule 5A of the First Schedule and rule 2A of the Second Schedule do not apply to the period, and secondly on the basis that the said rules do apply to the period, and it shall then be ascertained, on each basis, whether there are excess profits or a deficiency of profits for the whole period, and, if so, what is the amount thereof.

(3) There shall be deemed to be for the first part of the period excess profits or a deficiency of profits, as the case may be, equal to an apportioned part of the excess profits or deficiency of profits ascertained under sub-section (2) on the first basis mentioned therein, and there shall be deemed to be for the second part of the period excess profits or a deficiency of profits, as the case may be, equal to an apportioned part of the excess profits or deficiency of profits ascertained under sub-section (2) on the second basis mentioned therein; and, for the purpose of giving relief for deficiencies of profits under section 7, the first part of the period and the second part of the period shall each be treated as if it were a separate chargeable accounting period.

(4) Any apportionment required to be made by sub-section (3) shall be made by reference to the number of months and fractions of months in each of the parts of the whole period.]

Successions  
and  
amalgamations.

8. (1) As from the date of any change in the persons carrying on a business, the business shall, subject to the provisions of this section, be deemed for all the purposes of this Act except for the purposes of determining the amount of this statutory percentage to have been discontinued, and a new business to have been commenced.

(2) Where the change took place before the 1st day of September, 1939, and consisted in the death or retirement of a partner, or the taking in of a partner, the persons carrying on the business after the change may, by notice given in writing before the prescribed date to the Excess Profits Tax Officer, elect that, for the purposes of the provisions of this Act relating to the computation of standard profits, the business shall not be deemed to have been discontinued.

(3) A business shall not, for the purposes of the provisions of this Act relating to the computation of standard profits, be deemed to be discontinued by reason of any change

*Excess Profits Tax Act, 1940—contd.*

occurring on or after the 1st day of September, 1939, in the persons carrying it on, and the standard profits of the business in relation to any chargeable accounting period shall be computed accordingly, and, in particular, in computing the capital employed in the business after the change <sup>1</sup>[and in considering, for the purposes of computing the profits of, and the capital employed during, any chargeable accounting period, whether any and, if so, what deductions are to be made in respect of depreciation of buildings, plant and machinery,] no regard shall be had to any consideration given in respect of the transfer of the business or any of the assets thereof on the occasion of the change.

(4) Where, on or after the 1st day of September, 1939, two or more businesses are amalgamated, the resulting business shall be treated for the purposes of the provisions of this Act relating to the computation of standard profits as if—

- (a) it had been in existence throughout the period during which there were in existence any of the former businesses ;
- (b) any profits made or losses incurred or capital employed in any of those former businesses had been made, incurred or employed in the resulting business ; and
- (c) any assets of any of those former businesses had become assets of the resulting business when they became assets of the former business ;

and, in particular, in computing the capital employed in the resulting business <sup>1</sup>[and in considering, for the purposes of computing the profits of, and the capital employed during, any chargeable accounting period, whether any and, if so, what deductions are to be made in respect of depreciation of buildings, plant and machinery,] no regard shall be had to any consideration given in respect of the transfer of any of those former businesses or any of the assets thereof on the occasion of the amalgamation.

(5) Where, on or after the 1st day of September, 1939, part of a business is transferred as a going concern by the person theretofore carrying it on to another person, the part transferred and the part not transferred shall each be deemed for the purposes of the provisions of this Act relating to the computation of standard profits to be a continuation of the original business, and the said provisions, including the provisions of this section relating to amalgamations, shall apply accordingly,\* \* \* \* \*

<sup>1</sup> Ins., Excess Profits Tax (Amendment) Act, 1940 (42 of 1940).

<sup>2</sup> Words omitted, *ibid.*

*Excess Profits Tax Act, 1940—contd.*

Provided that, for the purposes aforesaid, such apportionments shall be made of the profits made, and losses incurred, and the capital employed, in the original business, and of any assets of the original business as may appear to the Excess Profits Tax Officer or, on appeal in the prescribed time and manner to the Board of Referees, to that Board to be just.

(6) Notwithstanding anything in the foregoing provisions of this section, where a business was carried on immediately before the 1st day of April, 1936, and that business, or the main part of that business, was transferred after the said day and before the 1st day of September, 1939, by the person carrying it on to another person, the Excess Profits Tax Officer, if he is satisfied that the business carried on after the transference was not substantially different from the business or part transferred, shall, on the application of the person carrying on the business after the transference, treat that person, for the purposes of the provisions of this Act relating to the computation of standard profits, as if he had carried on the transferred business or part of the business as from the date of the commencement of that business, <sup>1\*</sup>

\* \* \* \* \*

(7) Where, on or after the 1st day of September, 1939, a partner in a firm carrying on a business to which this Act applies dies, then notwithstanding anything contained in sub-section (1) any deficiency of profits in respect of any chargeable accounting period ending on or before the date of his death shall, if it has not been fully applied in reducing the profits of any chargeable accounting period under section 7, be carried forward and applied in reducing any profits from the same business carried on by the surviving partner or partners in the first chargeable accounting period after the death of the partner, and if and so far as it exceeds the amount of those profits, in reducing any profits from such business in the next subsequent chargeable accounting period and so on.

<sup>2</sup>[(8) Where—

- (a) a business is, by virtue of sub-section (2) or sub-section (3), deemed not to have been discontinued ;  
or
- (b) a business is, by virtue of sub-section (4), to be treated as if it had been in existence throughout the period during which there was in existence any other business ; or

<sup>1</sup> Words omitted, Excess Profits Tax (Amendment) Act, 1940 (42 of 1940).

<sup>2</sup> Ins., *ibid.*

*Excess Profits Tax Act, 1940—contd.*

- (c) a business is, by virtue of sub-section (5), to be treated as a continuation of another business ; or
- (d) any person who is carrying on a business after a transfer is treated, by virtue of sub-section (6), as having carried on the business as from a date before the transfer,

the provisions of this Act relating to the computation of profits and capital for the purposes of excess profits tax shall, both as respects the standard period and any chargeable accounting period, have effect subject to such modifications, if any, as the Excess Profits Tax Officer may think just, and the Excess Profits Tax Officer may make such alterations in the periods which would otherwise be the chargeable accounting periods of the business as he thinks proper :

Provided that if the Excess Profits Tax Officer makes any such modifications and the person carrying on the business is dissatisfied with the modifications so made, or if the person carrying on the business is dissatisfied with the refusal of the Excess Profits Tax Officer to make any such modifications, he may, at any time before the expiry of forty-five days from the date on which the order of the Excess Profits Tax Officer is communicated to him, appeal to the Board of Referees through the Excess Profits Tax Officer.]

9. (1) Where any interest, annuity or other annual payment, or any royalty or rent, is paid by one company to another company, and one of those companies is a subsidiary of the other, or both are subsidiaries of a third company, the capital, profits and losses of both companies shall be computed for the purposes of this Act as if—

*Inter-connected companies.*

- (a) the interest, annuity, annual payment, royalty or rent were not payable ;
- (b) any debt in respect of which any such interest is payable did not exist ; and
- (c) any asset in respect of which any such royalty or rent is payable were the property of the company paying the royalty or the rent.

<sup>1</sup>[(1A) Where—

- (a) any debt is owing to any company by another company ; and
- (b) one of those companies is a subsidiary of the other, or both are subsidiaries of a third company ; and

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<sup>1</sup> Ins., Excess Profits Tax (Amendment) Act, 1940 (42 of 1940).

*Excess Profits Tax Act, 1940—contd.*

- (c) no interest is payable in respect of the debt, but the circumstances in which the debt came into existence or is allowed to continue to exist are such that the debt represents in substance capital employed in the business of the debtor company,

the capital of both companies shall be computed as if the debt did not exist.]

(2) Where—

- (a) a company (hereinafter referred to as “the principal company”) is resident in British India and is not a subsidiary of any other company resident in British India; and
- (b) during the whole or any part of any chargeable accounting period of the principal company, another company, whether or not resident or carrying on business within British India (hereinafter referred to as “the subsidiary company”) is a subsidiary of the principal company,

the following provisions of this section shall, subject to the provisions of section 5, have effect in relation to that chargeable accounting period.

(3) If the subsidiary company is a subsidiary of the principal company throughout the chargeable accounting period, such capital employed in, and profits or losses arising from, the business of the subsidiary company as is employed or arise in—

- (i) the chargeable accounting period; or
- (ii) any year constituting or comprised in the standard period of the principal company,

shall be treated for the purposes of this Act as if it or they were capital employed in, or, as the case may be, profits or losses arising from, the business of the principal company.

(4) If the subsidiary company is a subsidiary of the principal company during part only of the chargeable accounting period, the excess or deficiency of profits of the subsidiary company for that part of that period shall be treated as increasing or, as the case may be, decreasing the excess or deficiency of profits of the principal company for the whole period and shall not be deemed to be an excess or deficiency of profits of the subsidiary company.

In this sub-section, the expressions “excess” and “deficiency” mean, in relation to profits, an excess or deficiency in relation to the standard profits of the subsidiary company or, as the case may be, the principal company.

*Excess Profits Tax Act, 1940—contd.*

(5) In any case to which sub-section (3) or sub-section (4) applies, such alteration, if any, of the periods which would otherwise be the chargeable accounting periods of the subsidiary company shall be made as the Central Board of Revenue may direct.

(6) For the purposes of this section, a company shall be deemed to be a subsidiary of another company if and so long as not less than nine-tenths of its ordinary share capital is owned by that other company, whether directly or through another company or other companies, or partly directly and partly through another company or other companies.

(7) The amount of ordinary share capital of one company owned by a second company through another company or other companies, or partly directly and partly through another company or other companies shall be determined in accordance with the provisions of the Third Schedule.

(8) In this section and the Third Schedule references to ownership shall be construed as references to beneficial ownership, and the expression "ordinary share capital", in relation to a company, means all the issued share capital (by whatever name called) of the company, other than capital the holders whereof have a right to a dividend at a fixed rate but have no other right to share in the profits of the company.

(9) The principal company shall be entitled to allocate to its subsidiary company or companies the respective proportionate shares of the excess profits tax payable by the whole group.

(10) The excess profits tax payable by virtue of this section by the principal company in respect of the profits of any subsidiary company shall, for the purposes of section 12, be deemed to have been paid by the subsidiary company and not by the principal company.

<sup>1</sup>[10. (1) In computing profits for the purposes of this section no deduction shall be made in respect of any transaction or operation of any nature if and so far as it appears that the transaction or operation has artificially reduced or would artificially reduce the profits.

Artificial transactions.

(2) If the Excess Profits Tax Officer is satisfied that any person has entered into or carried out any transaction or operation by which the profits have been or would be artificially reduced, he may, with the previous approval of

<sup>1</sup> Subs., Excess Profits Tax (Second Amendment) Act, 1941 (24 of 1941).



*Excess Profits Tax Act, 1940—contd.*

the Inspecting Assistant Commissioner, direct that such person shall pay, in addition to any excess profits tax for which he is or, but for such transaction or operation, would be liable, a penalty not exceeding the tax evaded or sought to be evaded.]

Transactions designed to avoid or reduce liability to excess profits tax.

<sup>1</sup>[10A. (1) Where the Excess Profits Tax Officer is of opinion that the main purpose for which any transaction or transactions was or were effected [whether before or after the passing of the Excess Profits Tax (Second Amendment) Act, 1941] was the avoidance or reduction of liability to excess profits tax, he may, with the previous approval of the Inspecting Assistant Commissioner, make such adjustments as respects liability to excess profits tax as he considers appropriate so as to counteract the avoidance or reduction of liability to excess profits tax which would otherwise be effected by the transaction or transactions.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), the powers conferred thereby extend—

- (a) to the charging with excess profits tax of persons who but for the adjustments would not be chargeable with any tax or would not be chargeable to the same extent;
- (b) to the charging of a greater amount of tax than would be chargeable but for the adjustments.

(3) Any person aggrieved by a decision of the Excess Profits Tax Officer under this section may appeal in the prescribed time and manner to the Appellate Tribunal.]

Relief in respect of double excess profits taxation.

11. (1) The Central Government may by notification in the official Gazette make provision for the granting of relief in cases where both excess profits tax under this Act and excess profits tax under any law in force in the United Kingdom, in any Indian State, or in any other part of His Majesty's Dominions have been paid upon the profits of any business if it appears to the Central Government that the laws of the United Kingdom or of that Indian State or of that other part of His Majesty's Dominions provide for corresponding relief in respect of excess profits tax charged on profits both in the United Kingdom or in that State or in that part and in British India :

Provided that where under section 19 of the Finance 2 & 3 Geo. 6, (No. 2) Act, 1939, national defence contribution has been paid in the United Kingdom in lieu of excess profits tax, that portion of the national defence contribution so paid

<sup>1</sup>Ins., Excess Profits Tax (Second Amendment) Act, 1941 (24 of 1941).

*Excess Profits Tax Act, 1940—contd.*

which is equal to the excess profits tax which would otherwise have been payable shall, for the purposes of this sub-section, be deemed to be excess profits tax paid in the United Kingdom.

(2) If any person, who has paid excess profits tax under this Act for any chargeable accounting period in respect of profits arising outside India in a country the laws of which do not provide for any relief in respect of excess profits tax charged in British India, proves that he has paid excess profits tax under the laws of the said country in respect of the same profits, he shall be entitled to the deduction from the excess profits tax payable in British India of a sum equal to one-half thereof or to one-half of the excess profits tax payable in the said country, whichever is the less.

12. (1) The amount of the excess profits tax payable in respect of a business for any chargeable accounting period diminished by any amount allowable by way of relief under the provisions of section 11, shall, in computing for the purposes of income-tax or super-tax the profits and gains of that business, be allowed to be deducted as an expense incurred in that period.

Allowance of excess profits tax in computing income for income-tax purposes.

(2) There shall also be so deducted the amount of any excess profits tax payable under any law in force in a country outside British India on the profits of the business in respect of any chargeable accounting period <sup>1</sup>[to the extent to which such profits are liable to excess profits tax under this Act] after diminishing such amount by any amount which is allowable by way of relief by repayment, set off or otherwise under any law in the country where the tax is payable providing for the granting of relief in that country where excess profits tax has also been charged in British India :

Provided that where, under the provisions of this Act relating to deficiencies of profits or under any corresponding law in force in the said country without British India relief is given by way of repayment from excess profits tax chargeable for any chargeable accounting period previous to that in which the deficiency occurs, the amount of the deduction allowed under sub-section (1) or sub-section (2) shall not be altered, but the amount repayable shall be taken into account in computing the profits and gains of the business for the purposes of income-tax as if it were a profit of the business accruing in the <sup>1</sup>[previous year (as determined for that

<sup>1</sup> Subs., Excess Profits Tax (Amendment) Act, 1940 (42 of 1940).

*Excess Profits Tax Act, 1940—contd.*

business for the purposes of the Indian Income-tax Act, 1922]] in which the deficiency of profits occurs.

Issue of notice  
for assessment.

13. (1) The Excess Profits Tax Officer may, for the purposes of this Act, require any person whom he believes to be engaged in any business to which this Act applies, or to have been so engaged during any chargeable accounting period, or to be otherwise liable to pay excess profits tax, to furnish within such period, not being less than sixty days from the date of the service of the notice, as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner setting forth (along with such other particulars as may be provided for in the notice) with respect to any chargeable accounting period specified in the notice the profits of the business and the standard profits of the business as computed in accordance with the provisions of section 6 or the amount of deficiency available for relief under section 7 :

Provided that the Excess Profits Tax Officer may, in his discretion, extend the date for the delivery of the return.

(2) The Excess Profits Tax Officer may serve on any person, upon whom a notice has been served under subsection (1), a notice requiring him on a date to be therein specified to produce, or cause to be produced, such accounts or documents as the Excess Profits Tax Officer may require and may from time to time serve further notices in like manner requiring the production of such further accounts or documents or other evidence as he may require :

Provided that the Excess Profits Tax Officer shall not require the production of any accounts relating to a period prior to the "previous year" as determined under section 2 of the Indian Income-tax Act, 1922, for the purpose of the income-tax assessment for the year ending on the 31st day of March, 1937. XI of 1922.

Assessments.

14. (1) The Excess Profits Tax Officer shall, by an order in writing after considering such evidence, if any, as he has required under section 13, assess to the best of his judgment the profits liable to excess profits tax and the amount of excess profits tax payable on the basis of such assessment, or if there is a deficiency of profits, the amount of that deficiency and the amount of excess profits tax, if any, repayable and shall furnish a copy of such order to the person on whom the assessment has been made.

(2) Excess profits tax payable in respect of any chargeable accounting period shall be payable by the person carrying on the business in that period.

*Excess Profits Tax Act, 1940—contd.*

(3) Where two or more persons were carrying on the business jointly in the chargeable accounting period, the assessment shall be made upon them jointly and, in the case of a partnership, may be made in the partnership name.

(4) Where by virtue of the foregoing provisions an assessment could, but for his death, have been made on any person either solely or jointly with any other person or persons, the assessment may be made on his legal representative either solely or jointly with that other person or persons, as the case may be.

15. If, in consequence of definite information which has come into his possession, the Excess Profits Tax Officer discovers that profits of any chargeable accounting period chargeable to excess profits tax have escaped assessment, or have been underassessed, or have been the subject of excessive relief, he may at any time within five years of the end of the chargeable accounting period in question serve on the person liable to such tax a notice containing all or any of the requirements which may be included in a notice under section 13, and may proceed to assess or re-assess the amount of such profits liable to excess profits tax and the provisions of this Act shall, so far as may be, apply as if the notice were a notice issued under that section.

Profits  
escaping  
assessment.

16. If the Excess Profits Tax Officer, the Appellate Assistant Commissioner or the Commissioner, in the course of any proceedings under this Act, is satisfied that any person has, without reasonable cause, failed to furnish the return required under sub-section (1) of section 13, or to produce or cause to be produced the accounts or documents or other evidence required by the Excess Profits Tax Officer under sub-section (2) of that section, or has concealed particulars of the profits made by or capital employed in the business, or has deliberately furnished inaccurate particulars of such profits or capital, he may direct that such person shall pay by way of penalty, in addition to the amount of any excess profits tax payable, a sum not exceeding—

Penalty.

- (a) where the person has failed to furnish the return required under sub-section (1) of section 13, the amount of the excess profits tax payable; and
- (b) in any other case, the amount of excess profits tax which would have been avoided if the return made had been accepted as correct:

Provided that the Excess Profits Tax Officer shall not impose any penalty under this section without the previous approval of the Inspecting Assistant Commissioner.

*Excess Profits Tax Act, 1940—contd.**Appeals.*

17. (1) Any person aggrieved by a decision made in pursuance of section 8, or objecting to the amount of excess profits tax for which he is liable as assessed by the Excess Profits Tax Officer or denying his liability to be assessed under this Act, or objecting to any penalty imposed by the Excess Profits Tax Officer, or to the amount of any deficiency of profits as assessed by the Excess Profits Tax Officer, or to the amount allowed by the Excess Profits Tax Officer by way of relief under any provision of this Act or to any refusal by the Excess Profits Tax Officer to grant relief, may appeal to the Appellate Assistant Commissioner :

Provided that no appeal shall lie against a determination of the amount of the profits of any standard period where those profits have been determined in accordance with the <sup>1</sup>[second] proviso to rule 1 of the First Schedule except in respect of adjustments made under the provisions of that Schedule :

<sup>2</sup>[Provided further that no appeal shall lie under this section against any apportionment made by the Excess Profits Tax Officer under the proviso to sub-section (5) of section 8, against any <sup>1</sup>[refusal to make modifications or against any modifications] made by the Excess Profits Tax Officer under sub-section (8) of section 8, against any decision of the Excess Profits Tax Officer under rule 11 of the First Schedule, or against any decision of the Board of Referees or the Central Board of Revenue.]

(2) An appeal shall ordinarily be presented within forty-five days of receipt of the notice of demand relating to the assessment or penalty objected to, or in the case of an appeal against the assessment of a deficiency of profits, within forty-five days of the receipt of the copy of the order determining the deficiency, or in the case of an appeal against the amount of a relief granted or a refusal to grant relief, within forty-five days of the receipt of the intimation of the order granting or refusing to grant the relief, but the Appellate Assistant Commissioner may admit an appeal after the expiration of that period if he is satisfied that the appellant had sufficient cause for not presenting it within that period.

(3) An appeal shall be in the prescribed form and shall be verified in the prescribed manner.

(4) The Appellate Assistant Commissioner shall hear and determine the appeal and, subject to the provisions of this

<sup>1</sup> Subs., Excess Profits Tax (Amendment) Act, 1941 (11 of 1941).

<sup>2</sup> Subs., Excess Profits Tax (Amendment) Act, 1940 (42 of 1940).

*Excess Profits Tax Act, 1940—contd.*

Act, shall pass such orders as he thinks fit, and such orders may include an order enhancing the assessment or a penalty :

Provided that an order enhancing an assessment or penalty shall not be made unless the person affected thereby has been given a reasonable opportunity of showing cause against such enhancement.

(5) The procedure to be adopted in the hearing and determination of appeals shall be in accordance with the rules made in this behalf by the Central Board of Revenue.

18. (1) Any person objecting to an order passed by an Appellate Assistant Commissioner imposing on him a penalty under section 16 or enhancing his assessment or enhancing a penalty under section 17 may appeal to the Commissioner within thirty days of the date on which he was served with notice of such order.

Appeal to Commissioner against Appellate Assistant Commissioner's orders imposing penalties or enhancing assessment or penalties.

(2) In disposing of the appeal the Commissioner may, after giving the appellant an opportunity of being heard, pass such orders thereon as he thinks fit.

VII of 1939.

(3) On the coming into operation of Part II of the Indian Income-tax (Amendment) Act, 1939, this section shall cease to have effect.

19. (1) The Commissioner may of his own motion call for the record of any proceeding under this Act which has been taken by any Excess Profits Tax Officer or Appellate Assistant Commissioner subordinate to him, and on receipt of the record may make such inquiry, or cause such inquiry to be made, and, subject to the provisions of this Act, may pass such orders thereon (including an order enhancing an assessment) as he thinks fit :

Power of revision.

Provided that he shall not pass any order prejudicial to a person to whose business this Act applies without hearing him, or giving him a reasonable opportunity of being heard.

VII of 1939.

(2) On the coming into operation of Part II of the Indian Income-tax (Amendment) Act, 1939, sub-section (1) shall cease to have effect, but thereafter any Excess Profits Tax Officer or any person in respect of whose business an order under section 14 has been passed who objects to an order passed by an Appellate Assistant Commissioner under section 16 or section 17 may, within the prescribed time and in the prescribed manner, appeal against such order to the Appellate Tribunal constituted under the Indian Income-tax Act, 1922, and that Tribunal shall have all such powers in disposing of the appeal as it has in respect of appeals preferred to it under the Indian Income-tax Act, 1922.

XI of 1922.

*Excess Profits Tax Act, 1940—contd.*

Rectification  
of mistakes.

20. The Commissioner may, at any time within four years from the date of any order passed whether by himself or by any Appellate Assistant Commissioner or Excess Profits Tax Officer under this Act, rectify any mistake in any evidence recorded during assessment or appellate proceedings, or any mistake apparent from the record and shall within the like period rectify any mistake apparent from the record which has been brought to his notice by a person to whose business this Act applies :

Provided that no such rectification shall be made having the effect of enhancing the liability of any person unless that person has been given a reasonable opportunity of being heard.

Application of  
provisions of  
Act XI of 1922.

21. The provisions of sections 4A, 4B, 10, 13, 24B, 29, 36 to 44C (inclusive), 45 to 48 (inclusive), 49E, 49F, 50, 54, 61 to 63 (inclusive), 65 to 67A (inclusive) of the Indian Income-tax Act, 1922, shall apply with such modifications, XI of 1922. if any, as may be prescribed as if the said provisions were provisions of this Act and referred to excess profits tax instead of to income-tax, and every officer exercising powers under the said provisions in regard to income-tax may exercise the like powers under this Act in regard to excess profits tax in respect of cases assigned to him under sub-section (3) of section 3 as he exercises in relation to income-tax under the said Act :

Provided that references in the said provisions to the assessee shall be construed as references to a person to whose business this Act applies.

Income-tax  
papers to be  
available for  
the purposes of  
this Act.

22. (1) Notwithstanding anything contained in the Indian Income-tax Act, 1922, all information contained in any XI of 1922. statement or return made or furnished under the provisions of that Act or obtained or collected for the purposes of that Act may be used for the purposes of this Act.

(2) All information contained in any statement or return made or furnished under the provisions of this Act or obtained or collected for the purposes of this Act may be used for the purposes of the Indian Income-tax Act, 1922. XI of 1922.

Failure to deli-  
ver returns or  
statements.

23. If any person fails, without reasonable cause or excuse, to furnish in due time any return or statement, or to produce, or cause to be produced, any accounts or documents required to be produced under section 13, he shall on conviction by a Magistrate be punishable with fine which may extend to five hundred rupees, and with a further fine which may extend to fifty rupees for every day during which the default continues.

*Excess Profits Tax Act, 1940—contd.*

24. If a person makes in any return required under section 13 any statement which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable on conviction by a Magistrate with simple imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

False statement and declaration.

25. (1) A person shall not be proceeded against for an offence under section 23 or section 24 except at the instance of the Inspecting Assistant Commissioner.

Institution of proceedings and composition of offences.

XLV of 1860.

(2) No prosecution for an offence punishable under section 23 or section 24 or under the Indian Penal Code shall be instituted in respect of the same facts as those in respect of which a penalty has been imposed under this Act.

(3) The Inspecting Assistant Commissioner may, either before or after the institution of proceedings, compound any offence punishable under section 23 or section 24.

26. (1) If <sup>1</sup>[on an application made to it through the Excess Profits Tax Officer] the Central Board of Revenue is satisfied in the case of any business that special circumstances exist which render it inequitable that the standard profits of the business in relation to any chargeable accounting period should be computed in accordance with the provisions of sub-section (1) of section 6, and that no relief or insufficient relief has been granted under the provisions of sub-section (3) of that section, the Central Board of Revenue may direct that the standard profits of the business shall be computed to be such greater amount as the Central Board of Revenue thinks just :

Power of Central Board of Revenue to grant relief in special cases.

Provided that such amount shall not exceed the statutory percentage of the average amount of the capital employed in the business unless the Central Board of Revenue is satisfied that owing to some specific cause peculiar to the business it is just that a greater amount should be allowed and that the relief, if any, afforded by the Board of Referees under sub-section (3) of section 6 is inadequate :

<sup>1</sup>[Provided further that a determination on an application under this sub-section—

(a) shall have effect with respect to all subsequent chargeable accounting periods ;

(b) shall exclude any further application under this sub-section.]

<sup>1</sup> Ins., Excess Profits Tax (Amendment) Act, 1940 (42 of 1940).



*Excess Profits Tax Act, 1940—contd.*

(2) Without prejudice to the generality of the provisions of sub-section (1) the Central Board of Revenue shall, in considering the making of a direction under that sub-section, have regard to the following circumstances, namely :—

- (a) that the capital employed in a business commenced on or after the 1st day of July, 1938, is so small in relation to the volume of the activities of the business that to compute the standard profits in accordance with the provisions of section 6 would be inequitable, taking into account the normal profits made in similar businesses ;
- (b) that owing to the nature of the business heavy expenditure by way of preliminary expenses or expenses in connection with experimental or development work has been incurred in accounting periods closely preceding the chargeable accounting period and that during the chargeable accounting period such expenditure would normally fall to be written off wholly or partly in the books of the person chargeable to excess profits tax ;
- (c) that the business is of a pioneer nature, that is to say, is concerned with an industrial process or a form of manufacture or production not undertaken in British India before the 1st day of April, 1932, and has not been in existence long enough to have paid income-tax for the previous year as determined for the purpose of the income-tax assessment for the year beginning on the 1st day of April, 1937 ;

<sup>1</sup>[or

- (d) in the case of any business which includes the winning of any mineral (including mineral oil) the winning of which is of exceptional importance for the prosecution of the present war, an increase in the output of the mineral which was essential in the national interest and which has had the effect of shortening the period during which but for such increased wartime output the source of the mineral might have been expected to be exhausted.]

(3) If <sup>2</sup>[on an application made to it through the Excess Profits Tax Officer] the Central Board of Revenue is satisfied that the computation in accordance with the provisions

<sup>1</sup> Ins., Excess Profits Tax (Second Amendment) Act, 1941 (24 of 1941).

<sup>2</sup> Ins., Excess Profits Tax (Amendment) Act, 1940 (42 of 1940).

*Excess Profits Tax Act, 1940—contd.*

of Schedule I of the profits of a business during any chargeable accounting period would be inequitable, owing to any of the following circumstances, namely :—

- (a) any postponement or suspension, as a consequence of the present hostilities, of renewals or repairs, or
- (b) the provision of buildings, plant or machinery which will not be required for the purposes of the business after the termination of the present hostilities, or
- (c) difficulties in bringing into British India income arising outside British India where the country in which the income accrued prohibits or restricts by its laws the remittance of money to British India, and loss in the remittance to British India of such income because of fluctuations in the rate of exchange between that country and British India ;

the Central Board of Revenue may direct that such allowances shall be made in computing the profits of the business during that chargeable accounting period as the Central Board of Revenue thinks just :

Provided that in making such direction the Central Board of Revenue may impose such conditions as it deems appropriate.

<sup>1</sup>[(4) An application to the Central Board of Revenue under this section shall be presented to the Excess Profits Tax Officer before the expiry of the period specified in the notice issued under sub-section (1) of section 13 or of the extended period allowed by the Excess Profits Tax Officer under the proviso to that sub-section, but in the case of an application under sub-section (1) of this section, if the person carrying on the business has made or is making an application under sub-section (3) of section 6 the application shall be presented to the Excess Profits Tax Officer before the expiry of forty-five days from the date on which the order of the Board of Referees disposing of the application under sub-section (3) of section 6 is communicated to the person who has made that application.]

27. (1) The Central Board of Revenue may, subject to the control of the Central Government, make rules for carrying out the purposes of this Act. Power to make rules.

(2) Without prejudice to the generality of the foregoing power, such rules may—

- (a) prescribe the procedure to be followed on appeals, applications for rectification of mistakes, and applications for refunds ;

<sup>1</sup> Ins., Excess Profits Tax (Second Amendment) Act, 1941 (24 of 1941).

*Excess Profits Tax Act, 1940—contd.*

- (b) provide for the adaptation to excess profits tax of any of the provisions of the Indian Income-tax Act, 1922, which are made applicable to excess profits tax by section 21; or of any rules made under any such provision; XI of 1922.
- (c) provide in regard to companies whose business consists wholly or mainly in the dealing in or holding of investments for the granting of exemption or relief from liability to excess profits tax of profits derived from investments in other companies the profits of which have been subjected to excess profits tax in British India;
- (d) provide for any matter which by, or under, this Act is to be prescribed.

(3) The power to make rules conferred by this section shall be exercised in like manner as the power to make rules under section 59 of the Indian Income-tax Act, 1922.

XI of 1922.

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### SCHEDULE I.

[ See section 2 (19). ]

#### *Rules for the computation of profits for purposes of Excess Profits Tax.*

1. The profits of a business during the standard period, or during any chargeable accounting period, shall be separately computed, and shall, subject to the provisions of this Schedule, be computed on the principles on which the profits of a business are computed for the purposes of income-tax under section 10 of the Indian Income-tax Act, 1922 :

XI of 1922.

<sup>1</sup>[Provided that any sums <sup>2</sup>[(other than any interest paid by a firm to a partner of the firm)] excluded under the proviso to clause (iii) of sub-section (2) or clause (a) of sub-section (4) of that section from the allowances made in computing the profits of the business for the purposes of income-tax shall, if paid, be included in those allowances when computing the profits of the business for the purposes of excess profits tax : ]

Provided <sup>1</sup>[further] that where the profits during any standard period have already been determined for the purpose of an assessment under the Indian Income-tax Act, 1922,

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<sup>1</sup> Ins., Excess Profits Tax (Amendment) Act, 1940 (42 of 1940).

<sup>2</sup> Ins., Excess Profits Tax (Amendment) Act, 1941 (11 of 1941).

*Excess Profits Tax Act, 1940—contd.*

such profits as so determined shall, subject to the adjustments required by this Schedule, be taken as the profits during that period for the purpose of excess profits tax :

Provided further that where a standard period or chargeable accounting period is not an accounting period, the profits or losses of the business during any accounting periods wholly or partly included within the standard period or chargeable accounting period shall be so computed as aforesaid, and such division and apportionment to specific periods of those profits or losses and such aggregation of those profits and losses, or any apportioned part thereof shall be made as appears necessary to arrive at the profit during the standard period or chargeable accounting period : and any such apportionment shall be made in proportion to the number of months or fractions of months in the respective periods unless the Excess Profits Tax Officer, having regard to any special circumstances, otherwise directs.

2. The profits of a business during the standard period shall be computed on the same basis and in the same manner as the profits of that business are under the Indian Income-tax Act, 1922, as amended by the Indian Income-tax (Amendment) Act, 1939, computed for the chargeable accounting period, notwithstanding that the Indian Income-tax (Amendment) Act, 1939, may not have been in force in the standard period.

XI of 1922.

VII of 1939.

3. (1) The principle of adding the allowance for depreciation for any one period to the allowance for depreciation for any subsequent period and deeming it to be part of the allowance for such subsequent period shall not be followed.

(2) No allowance shall be made for any loss other than a loss sustained in a business to which this Act applies.

(3) Nothing in this Act shall be construed as permitting the application, in computing profits for the purposes of the excess profits tax, of the provisions of sub-section (2) of section 24 of the Indian Income-tax Act, 1922.

4. (1) Income received from investments shall be included in the profits in the cases and to the extent provided in sub-rules (2), <sup>1</sup>[(2A)] and (4) of this rule and not otherwise.

(2) In the case of the business of a building society, or of a moneylending business, banking business, insurance business or business consisting wholly or mainly in the dealing in or holding of investments, the profits shall include all income received from investments, whether or not such

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<sup>1</sup> Ins., Excess Profits Tax (Amendment) Act, 1940 (42 of 1940).

*Excess Profits Tax Act, 1940—contd.*

income is included in the profits charged under section 10 of the Indian Income-tax Act, 1922, or is charged under any other section of that Act, or has been subjected to deduction of tax at source or is free of or exempt from income-tax. <sup>XI of 1922.</sup>

<sup>1</sup>[(2A) In the case of a business part of which consists in banking, insurance or dealing in investments, not being a business to which sub-rule (2) of this rule applies, the profits shall include all income received from investments held for the purposes of that part of the business, being income to which the persons carrying on the business are beneficially entitled.]

(3) Notwithstanding anything contained in sub-rule (2) <sup>1</sup>[or (2A)], where the profits of a subsidiary company are under the provisions of section 9 to be included in the profits of the principal company for the purposes of assessment to excess profits tax, dividends from the subsidiary company out of such profits shall not also be included in the profits of the principal company.

(4) In the case of a business which consists wholly or partly in the letting out of property on hire, the income from the property shall be included in the profits of the business whether or not it has been charged to income-tax under section 9 of the Indian Income-tax Act, 1922, or under any other section of that Act. <sup>XI of 1922.</sup>

(5) Where the person carrying on a business is the beneficial owner of any investments, the income from which is by virtue of the provisions of this rule not to be taken into account in computing the profits of the business, and a deduction would, apart from the provisions of this rule, fall to be made in respect of interest on borrowed money, the deduction (if any) to be made in respect of that interest shall be computed as if the principal of the borrowed money were reduced by the value of those investments :

Provided that where the person carrying on the business is not a company, no such reduction shall be deemed to be made in the principal of any borrowed money in respect of any investments unless the investments are mortgaged, charged or pledged as security for the repayment of that money and interest thereon.

5. If, at any time after the close of the standard period, any increase in the capital employed in a business has been effected by means of a loan from a bank carrying on a *bonâ fide* banking business, or by means of a public issue of debentures secured on the property of the company, the interest on so much of the loan or debentures as has been utilised in

<sup>1</sup> Ins., Excess Profits Tax (Amendment) Act, 1940 (42 of 1940).

*Excess Profits Tax Act, 1940—contd.*

effecting the increase in the capital shall not be deducted in computing the profits for the purposes of excess profits tax and, notwithstanding the provisions of rule 2 of Schedule II, that amount of such loan or debentures shall not be deducted in arriving at the amount of the capital employed in the business.

<sup>1</sup>[5A. (1) In computing for any chargeable accounting period ending after the end of March, 1941, and in relation thereto for the standard period, if any, the profits of a business other than a business to which sub-rule (2) of rule 4 of this Schedule applies, or the profits of a part of a business other than a part of a business to which sub-rule (2A) of the said rule applies, no deduction shall be made in respect of interest on borrowed money or in respect of any other consideration given for the use of borrowed money :

Provided that, as respects any such chargeable accounting period which commences before the said end of March, the application of this rule shall be subject to the provisions of section 7A of this Act :

Provided further that this rule shall not apply to the computation of profits of any business for any chargeable accounting period the standard profits for which are ascertained by reference to the minimum amount specified in sub-section (4) of section 6 of this Act :

Provided further that where a direction has been given by a Board of Referees under sub-section (3) of section 6, or by the Central Board of Revenue under sub-section (1) of section 26 of this Act, that the standard profits shall be computed as if the profits during the standard period were such greater amount as it thinks just, such amount shall be increased by the amount of the interest on or other consideration for the borrowed money during the standard period.

(2) In this rule and in rule 2A of the Second Schedule “borrowed money” means borrowed money which, apart from the provisions of the said rule 2A, would have been deductible in computing capital.]

6. No deduction shall be made on account of liability to pay, or payment of, income-tax, super-tax, or excess profits tax.

7. <sup>2</sup>[(1) In the case of a business carried on, in any accounting period which constitutes or includes a chargeable

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<sup>1</sup> Ins., Excess Profits Tax (Second Amendment) Act, 1941 (24 of 1941).

<sup>2</sup> Subs., Excess Profits Tax (Amendment) Act, 1940 (42 of 1940).

*Excess Profits Tax Act, 1940—contd.*

accounting period, by a company the directors whereof have throughout that accounting period a controlling interest therein—

- (a) in computing the profits for that accounting period ;  
and
- (b) if the standard profits of the business are computed by reference to the profits of a standard period, also in computing, in relation to any such chargeable accounting period, the profits for the standard period,

no deduction shall be made in respect of directors' remuneration.]

(2) <sup>1</sup>[In sub-rule (1) of this rule] the expression " directors' remuneration " does not include—

- (a) the remuneration of any director who is required to devote substantially the whole of his time to the service of the company in a managerial or technical capacity and is not the beneficial owner of, or able, either directly or through the medium of other companies or by any other indirect means, to control, more than five per cent. of the ordinary share capital of the company, or
- (b) the remuneration of any managing agent where such remuneration is included in the profits of the managing agent's business for the purposes of excess profits tax.

<sup>2</sup>[(3) If, in the case of a business carried on by a company in any accounting period which constitutes or includes a chargeable accounting period, the directors of the company—

- (a) have during any part of that accounting period, or
- (b) had during the whole or any part of any previous accounting period which includes the whole or any part of any chargeable accounting period or the whole or any part of the standard period (if any),

a controlling interest therein, and the case is not one to which sub-rule (1) of this rule applies, then, except in so far as the Central Board of Revenue otherwise directs, no deduction shall be made in respect of directors' remuneration either in computing the profits for the first mentioned

<sup>1</sup> Subs., Excess Profits Tax (Amendment) Act, 1940 (42 of 1940).

<sup>2</sup> *Ins.*, *ibid.*

*Excess Profits Tax Act, 1940—contd.*

accounting period or in computing in relation to any chargeable accounting period wholly or partly included in that accounting period, the profits of the standard period (if any)].

8. In the case of a business carried on by a company, if the standard profits of the company are computed by reference to the profits during a standard period, no deduction shall be allowed in respect of remuneration paid to a managing agent in excess of the amount which would have been payable to that managing agent if the agreement in force in the standard period had been in force in the chargeable accounting period, except where such remuneration is subjected to excess profits tax in the hands of the managing agent.

9. Where the performance of a contract extends beyond the accounting period, there shall (unless the Excess Profits Tax Officer, owing to any special circumstances, otherwise directs) be attributed to the accounting period such proportion of the entire profits or loss which has resulted, or which it is estimated will result, from the complete performance of the contract as is properly attributable to the accounting period, having regard to the extent to which the contract was performed therein :

Provided that when any such contract has been completed and the profits have been finally ascertained, if the aggregate of the amounts attributed to previous accounting periods exceeds the profit, as finally ascertained, from the complete performance of the contract, an adjustment shall be made to reduce the amounts so attributed to the various chargeable accounting periods to the amount of the profits as finally ascertained.

10. In respect of any building erected on or after the 1st day of September, 1939, which during any chargeable accounting period has ceased to be required for the purposes of the business or has been sold, any amount by which the value of the building at the date when it ceased to be required for the purposes of the business or the price obtained for the building, as the case may be, falls short of the written down value of the building shall be allowed as a deduction in arriving at the profits of that chargeable accounting period.

<sup>1</sup>[11. Where in respect of any accounting period a deduction would, apart from the provisions of this rule, be allowable in computing profits, and, in the opinion of the Excess Profits Tax Officer, the deduction does not

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<sup>1</sup> Added, *Excess Profits Tax (Amendment) Act, 1940* (42 of 1940).



*Excess Profits Tax Act, 1940—contd.*

represent a sum reasonably and properly attributable to that accounting period, only such part of the deduction shall be allowable as a deduction for that period as appears to the Excess Profits Tax Officer to be reasonably and properly attributable to that period, and any balance of the deduction shall be treated as attributable to such other accounting period or periods (whether or not they include, or fall wholly or partly within, the standard period, if any, or any chargeable accounting period) as the Excess Profits Tax Officer thinks proper.

Any person who is dissatisfied with a determination of the Excess Profits Tax Officer under this rule may, at any time before the expiry of forty-five days from the date on which such determination is communicated to him, appeal to the Board of Referees through the Excess Profits Tax Officer.]

1[12. (1) In computing the profits of any chargeable accounting period no deduction shall be allowed in respect of expenses in excess of the amount which the Excess Profits Tax Officer considers reasonable and necessary having regard to the requirements of the business and, in the case of directors' fees or other payments for services, to the actual services rendered by the person concerned :

Provided that no disallowance under this rule shall be made by the Excess Profits Tax Officer unless he has obtained the prior authority of the Commissioner of Excess Profits Tax.

(2) Any person who is dissatisfied with the decision of the Excess Profits Tax Officer under this rule may appeal in the prescribed time and manner to the Appellate Tribunal.]

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## SCHEDULE II.

[See section 2 (3).]

### *Rules for computing the average amount of capital.*

1. (1) Subject to the provisions of this Schedule, the average amount of the capital employed in a business (so far as it does not consist of money) shall be taken to be—

- (a) so far as it consists of assets acquired by purchase on or after the commencement of the business, the price at which those assets were acquired, subject to the deductions hereafter specified ;

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<sup>1</sup> Added, Excess Profits Tax (Second Amendment) Act, 1941 (24 of 1941).

*Excess Profits Tax Act, 1940—contd.*

(b) so far as it consists of assets being debts due to the person carrying on the business, the nominal amount of those debts, subject to the said deductions ;

(c) so far as it consists of any other assets which have been acquired otherwise than by purchase as aforesaid, the value of the assets when they became assets of the business, subject to the said deductions.

(2) The price or value of any assets other than a debt shall be subject to such deductions for depreciation as are necessary to reduce the asset to its written down value <sup>1</sup>[and to such other deductions in respect of reduced values of assets as are allowable in computing profits for the purposes of income-tax] and, in the case of a debt, the nominal amount of the debt shall be subject to any deduction which has been allowed in respect thereof for income-tax purposes.

(3) Where the price of any asset has been satisfied otherwise than in cash, the then value of the consideration actually given for the asset shall be treated as the price at which the asset was acquired.

2. (1) Any borrowed money and debts shall be deducted, and in particular any debt for income-tax or super-tax or for excess profits tax in respect of the business shall be deducted.

<sup>1</sup>[The debts to be deducted under this sub-rule shall include any such sums in respect of accruing liabilities as are allowable as a deduction in computing profits for the purposes of excess profits tax or would have been so allowable if the period for which the amount of capital is being computed had been a chargeable accounting period ; and the said sums shall be deducted notwithstanding that they have not become payable] :

Provided that any such debt for income-tax or super-tax or excess profits tax shall, for the purposes of this Schedule, be deemed to have become due—

(a) in the case of income-tax and super-tax, on the last day of the period of time within which the tax is payable under section 45 of the Indian Income-tax Act, 1922 ;

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(b) in the case of excess profits tax, on the first day after the end of the chargeable accounting period in respect of which the tax is assessable notwith-

<sup>1</sup> Ins., Excess Profits Tax (Amendment) Act, 1940 (42 of 1940).

*Excess Profits Tax Act, 1940—contd.*

standing that the excess profits tax may not have been assessed until after that date.

(2) Where any debt for the excess profits tax assessable in respect of any period is to be deducted under this rule, the amount thereof shall not be reduced as the result of any relief to be given in respect of a deficiency of profits occurring in any subsequent period, and the amount of any such relief shall be treated as having become an asset of the business on the first day after the end of the chargeable accounting period in which the deficiency occurred.

[2A. In computing for any chargeable accounting period ending after the end of March, 1941, and in relation thereto for the standard period, if any, the average capital of a business other than a business to which sub-rule (2) of rule 4 of the First Schedule applies, or the average capital of a part of a business other than a part of a business to which sub-rule (2A) of the said rule applies, no deduction shall be made in respect of borrowed money :

Provided that, as respects any such chargeable accounting period which commences before the said end of March, the application of this rule shall be subject to the provisions of section 7A of this Act :

Provided further that the same deduction shall be made in respect of accruing liabilities for interest as would have been made if this rule had not been enacted.]

3. Any investments the income from which is by virtue of the provisions of the First Schedule not to be taken into account in computing the profits of the business, and any moneys not required for the purposes of the business, shall be left out of account, but where any investments in the beneficial ownership of the person carrying on the business are so left out of account, the sum (if any) to be deducted under the last preceding rule in respect of borrowed money shall be computed as if the principal of the borrowed money were reduced by the value of those investments :

Provided that where the person carrying on the business is not a company, no reduction shall be deemed to be made in the principal of any borrowed money in respect of any investments unless the investments are mortgaged, charged or pledged as security for the repayment of that money and the interest thereon.

4. Notwithstanding anything contained in rule 3, in the case of the business of shipping, to which this Act applies,

<sup>1</sup> *Ins., Excess Profits Tax (Second Amendment) Act, 1941 (24 of 1941).*

*Excess Profits Tax Act, 1940—contd.*

the sale proceeds of any tonnage sold or the amount of compensation in respect of loss of ships or the amount of accumulation of reserves, whether invested or not, shall be taken into account in computing the average amount of capital employed in such business :

Provided that any income received from investment of such funds shall be included in computing profits for purposes of the excess profits tax.

5. For the purpose of ascertaining the average amount of capital employed in a business during any period, the profits or losses made in that period shall, except so far as the contrary is shown, be deemed—

- (a) to have accrued at an even rate throughout the period ; and
- (b) to have resulted, as they accrued, in a corresponding increase or decrease, as the case may be, in the capital employed in the business.

6. Where, in accordance with the [second or third proviso] to section 5 of this Act, this Act is applicable to part only of a business, the capital employed in that part shall be computed separately from any other capital of the person carrying on the business, and all references to capital employed in a business shall be construed as references to capital employed in that part of the business only.

<sup>2</sup>[7. (1) If—

- (a) the Central Board of Revenue is satisfied, as respects any assets of any business the standard profits of which are computed by reference to the profits of a standard period, that during that period or any part thereof those assets were inherently unproductive, and
- (b) an application that this rule shall have effect is made through the Excess Profits Tax Officer to the Central Board of Revenue by the person carrying on the business,

then, in computing the average amount of the capital employed in the business in the standard period and in all chargeable accounting periods, those assets, and any other assets of the business, shall be treated as not having been assets thereof during any part of the period during which, in the opinion of the Central Board of Revenue, they were inherently unproductive :

<sup>1</sup> Subv., Excess Profits Tax (Second Amendment) Act, 1941 (24 of 1941).

<sup>2</sup> Added, Excess Profits Tax (Amendment) Act, 1940 (42 of 1940).

*Excess Profits Tax Act, 1940—contd.*

Provided that in the case of a business the standard profits of which depend directly or indirectly upon a direction of the Board of Referees under sub-section (3) of section 6, or of the Central Board of Revenue under sub-section (1) of section 26 of this Act, the provisions of this rule shall have effect to such extent only as the Central Board of Revenue thinks proper :

Provided further that an application to the Central Board of Revenue under this rule shall be presented to the Excess Profits Tax Officer before the expiry of the period specified in the notice issued under sub-section (1) of section 13 of this Act or of the extended period allowed by the Excess Profits Tax Officer under the proviso to that sub-section.

(2) Where sub-rule (1) of this rule has effect on the application of the person carrying on any business, any computation of capital of the business made before the making of the application and any assessment affected by that computation shall be revised accordingly.]

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### SCHEDULE III.

[See section 9 (7).]

*Rules for determining the amount of capital held by a company through other companies.*

1. Where, in the case of a number of companies, the first directly owns ordinary share capital of the second and the second directly owns ordinary share capital of the third, then, for the purposes of this Schedule, the first shall be deemed to own ordinary share capital of the third through the second and, if the third directly owns ordinary share capital of a fourth, the first shall be deemed to own ordinary share capital of the fourth through the second and third, and the second shall be deemed to own ordinary share capital of the fourth through the third, and so on.

2. In this Schedule—

- (a) any number of companies of which the first directly owns ordinary share capital of the next and the next directly owns ordinary share capital of the next but one and so on, and if they are more than three, any three or more of them are referred to as “a series” ;

*Excess Profits Tax Act, 1946—contd.*

(b) in any series—

- (i) that company which owns ordinary share capital of another through the remainder is referred to as “the first owner”;
  - (ii) that other company the ordinary share capital of which is so owned is referred to as “the last owned company”;
  - (iii) the remainder, if one only, is referred to as an “intermediary” or, if more than one, is referred to as a “chain of intermediaries”;
- (c) a company in a series which directly owns ordinary share capital of another company in the series is referred to as an “owner”;
- (d) any two companies in a series of which one owns ordinary share capital of the other directly, and not through one or more of the other companies in the series, are referred to as being directly related to one another.

3. Where every owner in a series owns the whole of the ordinary share capital of the company to which it is directly related, the first owner shall be deemed to own through the intermediary or chain of intermediaries the whole of the ordinary share capital of the last owned company.

4. Where one of the owners in a series owns a fraction of the ordinary share capital of the company to which it is directly related, and every other owner in the series owns the whole of the ordinary share capital of the company to which it is directly related, the first owner shall be deemed to own that fraction of the ordinary share capital of the last owned company through the intermediary or chain of intermediaries.

5. Where—

- (a) each of two or more of the owners in a series owns a fraction, and every other owner in the series owns the whole, of the ordinary share capital of the company to which it is directly related; or
- (b) every owner in a series owns a fraction of the ordinary share capital of the company to which it is directly related,

the first owner shall be deemed to own through the intermediary or chain of intermediaries such fraction of the ordinary share capital of the last owned company as results from the multiplication of those fractions.

*Excess Profits Tax Act, 1940—concl'd. National Service  
(European British Subjects) Act, 1940.*

6. Where the first owner in any series owns a fraction of the ordinary share capital of the last owned company in that series through the intermediary or chain of intermediaries in that series, and also owns another fraction or other fractions of the ordinary share capital of the last owned company either—

- (a) directly ; or
- (b) through any intermediary or intermediaries which is not a member or are not members of that series ;  
or
- (c) through a chain or chains of intermediaries of which one or some or all are not members of that series ;  
or
- (d) in a case where the series consists of more than three companies, through an intermediary or intermediaries which is a member or are members of the series, or through a chain or chains of intermediaries consisting of some but not all of the companies of which the chain of intermediaries in the series consists,

then, for the purpose of ascertaining the amount of the ordinary share capital of the last owned company owned by the first owner, all those fractions shall be aggregated and the first owner shall be deemed to own the sum of those fractions.

ACT No. XVIII OF 1940.

THE NATIONAL SERVICE (EUROPEAN BRITISH  
SUBJECTS) ACT, 1940.

*(Received the assent of the Governor General on the 9th April,  
1940.)*

*An Act to make certain provisions relating to service by European  
British subjects <sup>1</sup>[in the armed forces of the Crown and  
in civilian employment].*

WHEREAS it is expedient to make certain provisions relating to service by European British subjects <sup>1</sup>[in the armed forces of the Crown and in civilian employment];

It is hereby enacted as follows :—

1. (1) This Act may be called the National Service (European British Subjects) Act, 1940.

Short title,  
extent and  
commence-  
ment.

<sup>1</sup> Subs., s. 2 of the National Service (European British Subjects) Amendment Ordinance, 1940 (5 of 1940).

*National Service (European British Subjects) Act, 1940—contd.*

(2) It extends to the whole of British India and applies also to European British subjects in any part of India.

(3) It shall come into force at once.

2. In this Act, unless there is anything repugnant in Definitions, the subject or context,—

(a) “competent authority” means, with reference to any person liable under this Act to be called up for <sup>2</sup>[national service], the Officer Commanding the military district, or Independent Area, or Sind Area or Delhi Area, as the case may be, in which that person is for the time being resident :

(b) “European British subject” means any subject of His Majesty of European descent in the male line born, naturalised or domiciled in the British Islands or in any Dominion as defined in the Statute of Westminster, 1931, or in any Colony except Ceylon ;

(c) “prescribed” means prescribed by rules made under this Act ;

(d) “national service” means service in the armed forces of the Crown or <sup>2</sup>[in a civilian capacity in pursuance of a notice issued under section 7].

3. (1) Every male European British subject for the time being in India, not being—

*Liability to be called up for enquiry.*

(a) a person in holy orders, or a regular minister of any religious denomination, or

(b) a member of His Majesty’s regular Naval, Military or Air Forces, or a member of any Reserve of any such force who is liable under his terms of service in such Reserve to be called up for service at any time and not only on partial or general mobilisation, or

(c) a servant of the Crown, or

(d) a person not included in clause (c) who is serving in the service of a federal railway or an Indian State railway or a minor railway as defined in the Government of India Act, 1935.

shall be liable under this Act to be called up for <sup>3</sup> \* \* \* \* national service.

<sup>1</sup> For application of this Act to different areas, see Vol. III, p. 274.

<sup>2</sup> Subs., s. 3 of the National Service (European British Subjects) Amendment Ordinance, 1940 (5 of 1940).

<sup>3</sup> Words omitted, s. 4, *ibid.*



*National Service (European British Subjects) Act, 1940—contd.*

(2) A person liable to be called up for <sup>1</sup>[national service] under this Act shall remain so liable until he has completed his fiftieth year and no longer.

Calling up for enquiry.

4. (1) The competent authority may, after consultation with the National Service Advisory Committee constituted under section 5, cause to be served on any person, for the time being liable under this Act to be called up for <sup>2</sup>[national service], a written notice (hereinafter referred to in this Act as a <sup>2</sup>[preliminary notice]) stating that he is called up for enquiry into his fitness and availability for national service and requiring him to present himself to such person and at such place and at such time (not earlier than the seventh day after the date of the service of the notice) as may be specified in the notice, and to submit himself to examination by the National Service Advisory Committee constituted under section 5.

(2) Where a notice under sub-section (1) has been duly served on any person, the competent authority may, at any time while that person remains liable under this Act to be called up for <sup>2</sup>[national service], cancel the notice and cause to be served on him a further notice varying the original notice.

(3) A <sup>2</sup>[preliminary notice] served on any person shall cease to have effect if, before the date on which he is thereby required to present himself, he ceases to be liable under this Act to be called up for <sup>2</sup>[national service].

(4) Such travelling and other allowances as may be prescribed shall be paid by the competent authority to any person required to present himself in accordance with any notice under this section.

Determination of question whether a person is liable to be called up for national service.

<sup>3</sup>4A. (1) If any question arises with respect to a person on whom it is proposed to serve a notice under sub-section (1) of section 4, or with respect to a person on whom a notice under sub-section (1) of section 4 has been served, whether such person is liable under this Act to be called up for national service, the competent authority shall, unless the question has proved capable of settlement by agreement, apply or cause an application to be made to the District Magistrate or to an officer specially empowered in this behalf by the Central Government in the area in which such person is for

<sup>1</sup> Subs., s. 4 of the National Service (European British Subjects) Amendment Ordinance, 1940 (5 of 1940).

<sup>2</sup> Subs., s. 5, *ibid.*

<sup>3</sup> *Ins.*, National Service (European British Subjects) Amendment Ordinance, 1941 (6 of 1941).

*National Service (European British Subjects) Act, 1940—contd.*

the time being present to have the matter determined, and such Magistrate or other officer, after hearing both parties to the question or giving them a reasonable opportunity of being heard, shall summarily determine the matter, and the decision of such Magistrate or other officer shall be final.

(2) A claim with respect to a person on whom a notice under sub-section (1) of section 4 has been served that he is not liable under this Act to be called up for national service shall be presented by the claimant to the competent authority, not later than the date on which the person concerned is required by the said notice to present himself for examination by the National Service Advisory Committee, and shall be accompanied by a statement of such claim in writing to the competent authority, and no such claim may be made at any other time or in any other manner.

(3) In determining any question referred to in sub-section (1) the fact that a person has registered himself as a European British subject under the provisions of the Registration (Emergency Powers) Act, 1940, or that he has, after a determination under section 4 of that Act, been registered as a European British subject under the provisions of that Act, shall be conclusive proof that such person is a European British subject for the purposes of this Act.]

I of 1940

5. (1) The Central Government shall constitute for such areas and in such places as it thinks fit committees (in this Act referred to as National Service Advisory Committees) to exercise the functions assigned to such committees by this Act. National Service Advisory Committees.

(2) Each National Service Advisory Committee shall consist of not less than four members of whom one shall be an officer of one of His Majesty's Forces in India appointed by the competent authority, and the others shall be European British subjects, not being servants of the Crown, appointed by the Central Government.

(3) The Chairman of the Committee shall be appointed by the Committee.

(4) A National Service Advisory Committee shall have power to co-opt as additional members for such time or purpose as it thinks fit any persons qualified for appointment to the Committee by the Central Government.

(5) A National Service Advisory Committee may meet at such times and places as it thinks fit and shall meet when required to do so by the Central Government or by the competent authority.

*National Service (European British Subjects) Act, 1940—contd.*

<sup>1</sup>[ (6) The Chairman of the Committee and any one other member of the Committee shall constitute a quorum.]

<sup>2</sup>[ (7) ] A National Service Advisory Committee shall have the powers of a Civil Court for the purpose of receiving evidence, administering oaths, enforcing the attendance of witnesses, and compelling the discovery of documents, and shall be deemed to be a Civil Court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, <sup>v of 1898.</sup> 1898.

<sup>3</sup>[ (8) ] A National Service Advisory Committee may order any person called up for enquiry under sub-section (1) of section 4 to submit himself to be examined by a medical officer of the armed forces, and if he questions the decision of that officer, to appear before a medical board convened under military regulations.

Functions of  
National Service  
Advisory  
Committees.

6. The following shall be the functions of National Service Advisory Committees, namely :—

- (a) when consulted by the competent authority, to advise that authority on the exercise of that authority's powers under sub-section (1) of section 4 ;
- <sup>4</sup>[ (b) to examine the case of any person ordered under section 4 to present himself for enquiry, and to report to the competent authority—
  - (i) whether such person is fit for service in the armed forces or is fit for service in a civilian capacity only, or in both,
  - (ii) whether such person is or is not available for national service (*i.e.*, can be spared without detriment to the public interest from his existing employment),
  - (iii) where such person claims that he conscientiously objects to performing military service, whether the claim made is or is not established ;]
- (c) when consulted by the Central Government, to advise the Central Government on any matter arising out of this Act which the Central Government may refer or is required by this Act to refer to the Committee.

<sup>1</sup> Ins., s. 6 of the National Service (European British Subjects) Amendment Ordinance, 1940 (5 of 1940).

<sup>2</sup> Original sub-section (6) was re-numbered (7) by s. 6, *ibid.*

<sup>3</sup> Original sub-section (7) was re-numbered (8), *ibid.*

<sup>4</sup> Subs., s. 7, *ibid.*

*National Service (European British Subjects) Act, 1940—contd.*

<sup>1</sup>[6A. (1) If any person liable under this Act to be called up for national service claims that he conscientiously objects to performing military service, he shall, upon receipt of the preliminary notice issued under sub-section (1) of section 4 and not later than the date specified in that notice as the date on which he is to present himself for submission to examination by the National Service Advisory Committee, prefer such claim, in such form and with such particulars as may be prescribed, to the competent authority and the competent authority shall submit the claim to the National Service Advisory Committee.

On conscientious  
objection to  
military  
service.

(2) The National Service Advisory Committee shall record in writing a finding, with the reasons therefor, whether the claim is or is not established, and a copy of such finding shall be supplied to the claimant.

(3) If the National Service Advisory Committee finds that such claim is established the claimant shall not be liable to be called up for service in the armed forces of the Crown.

(4) Any claimant aggrieved by a finding of the National Service Advisory Committee that such claim is not established may, within seven days from the date on which he receives the copy of the finding, appeal to the tribunal constituted under section 9, and, if that tribunal reverses the finding of the National Service Advisory Committee, the claimant shall not be liable to be called up for service in the armed forces of the Crown.]

<sup>2</sup>[7. (1) The competent authority may cause to be served on any person, who is liable under this Act to be called up for national service and whose case has been examined and reported on by the National Service Advisory Committee, a written notice (hereinafter referred to in this Act as a calling-up notice) stating that he is called up for service in such one of His Majesty's armed forces as may be specified in the notice, or for service in such civilian capacity whether under the Crown or otherwise as may be so specified, and requiring him to present himself at such place and time (not earlier than the seventh day after the date of the service of the notice) and to such authority as may be so specified; and, subject to the following provisions of this Act, the person upon whom the notice is served shall, when the notice states that he is called up for service in one of His Majesty's Forces, be deemed as from the day so specified to have been

Called up for  
service.

<sup>1</sup> Ins., s. 8 of the National Service (European British Subjects) Amendment Ordinance, 1940 (3 of 1940).

<sup>2</sup> Sections 7, 7A, 7B and 7C were substituted for the original section 7 by s. 9, *ibid*.

*National Service (European British Subjects) Act, 1940—contd.*

duly entered or enlisted for service in the force so specified, and, when the notice states that he is called up for service in a civilian capacity, be legally bound as from the day so specified to obey any directions given by the authority so specified as to his entering employment in a civilian capacity.

(2) A notice under sub-section (1) calling up a person for service in a civilian capacity shall be issued by the competent authority only at the request of, or otherwise in consultation with, an officer (or officers) empowered by the Central Government for the purposes of this sub-section to authorise such issue, and the authority specified in such notice as that to which the person called up shall present himself shall be such authority as that officer (or those officers) may direct.

(3) Where a calling-up notice has been duly served on any person, the competent authority may, at any time while that person remains liable under this Act to be called up for national service, cancel the notice and cause to be served on him a further notice varying the original notice.

(4) A calling-up notice served on any person shall cease to have effect if, before the date on which he is thereby required to present himself, he ceases to be liable under this Act to be called up for national service.

(5) Such travelling and other allowances as may be prescribed shall be paid by the competent authority to any person required to present himself in accordance with a calling-up notice.

Appeals in  
connection  
with calling-  
up notices.

**17A.** (1) Where a calling-up notice is served under section 7 upon any person who has been reported by the National Service Advisory Committee to be not available for national service, a copy of the notice shall at the same time be served upon his employer, and that person himself or the employer of that person may, at any time before the seventh day from the service of the notice, appeal against the order to the tribunal constituted under section 9.

(2) Where a calling-up notice is served under section 7 upon any person who has been reported by the National Service Advisory Committee to be available for national service, a copy of the notice shall be served at the same time on his employer, if any, and that person himself or the employer, if any, of that person may, at any time before the seventh day from the service of the notice, appeal against the order to the tribunal constituted under section 9.

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<sup>2</sup> See footnote 2 on *pre-page*.

*National Service (European British Subjects) Act, 1940—contd.*

(3) Any person, on whom a calling-up notice under section 7 is served, may, without prejudice to the provisions of sub-section (1) and sub-section (2), at any time before the seventh day from the service of the notice, appeal to the tribunal constituted under section 9 on the ground that he is not fit for the service for which he is called up.

(4) Pending the disposal of an appeal under this section, the notice under section 7 shall be deemed to be suspended, and if the tribunal decides that such person is not available for national service or is not fit for the service specified in the notice, as the case may be, the notice shall be cancelled.

**17B.** (1) When any person is called up under section 7 for service in a specified civilian capacity, his terms of service in such capacity shall be laid down by the competent authority in each case, subject to such conditions as may be prescribed, and such conditions may provide for the preservation of any rights which the person called up may have under any provident or superannuation fund or other scheme for the benefit of employees maintained in connection with the employment he relinquishes.

Terms of service of persons entering civilian employment.

(2) Such person himself, or the employer under whom he enters employment in pursuance of the notice issued under section 7, may appeal to the tribunal constituted under section 9 against any decision of the competent authority under sub-section (1), and the decision of the said tribunal shall be final; but pending the disposal of any such appeal the notice under section 7 shall, unless the competent authority otherwise directs, continue to be of full force and effect.

**17C.** When any person called up under section 7 for service in one of His Majesty's Forces has any rights under any provident or superannuation fund or other scheme for the benefit of employees maintained in connection with the employment he relinquishes, he shall continue so long as he remains in His Majesty's Forces to have in respect of such fund or scheme such rights as may be prescribed.]

Preservation of certain rights of persons called up for service in His Majesty's Forces.

**8.** <sup>2</sup>[(1)] It shall be the duty of any employer by whom a person who has been <sup>3</sup>[called up under this Act for national service], or by whom a European British subject who has been called out for service in the Reserve of His Majesty's regular Naval, Military or Air Forces at any time after the

Reinstatement.

<sup>1</sup> See footnote 2 on p. 143, *supra*.

<sup>2</sup> Renumbered, National Service (European British Subjects) Amendment Ordinance, 1941 (6 of 1941).

<sup>3</sup> Subs., s. 10 of the National Service (European British Subjects) Amendment Ordinance, 1940 (5 of 1940).

*National Service (European British Subjects) Act, 1940—contd.*

2nd day of September, 1939, and before the termination of hostilities, or by whom a person subject to this Act who with the consent of his employers was between the 2nd day of September, 1939, and the coming into force of this Act granted an emergency commission or enlisted in His Majesty's armed forces or accepted for training as a cadet at an officers' training school, was employed, to reinstate him in his employment <sup>1</sup>[at the termination of his national service or service in the armed forces or training as a cadet where such training is not followed by service in the armed forces, as the case may be,] in an occupation and under conditions not less favourable to him than those which would have been applicable to him <sup>1</sup>[had his employment not been so interrupted]:

<sup>1</sup>[Provided that if the employer refuses to reinstate such person, or denies his liability to reinstate such person or if for any reason the reinstatement of such person] is represented by the employer to be impracticable, either party may refer the matter to a tribunal constituted under section 9 and that tribunal shall after consideration pass an order either exempting the employer from the provisions of this section or requiring him to re-employ such person <sup>2</sup>\* \* \* on such terms as it thinks suitable, or requiring him to pay to such person <sup>2</sup>\* \* \* a sum in compensation for failure to re-employ not exceeding an amount equal to six months' remuneration at the rate at which his last remuneration was payable to him by the employer; and if any employer fails to obey the order of the tribunal, he shall be punishable with a fine which may extend to one thousand rupees; and the Court by which an employer is convicted under this section may order him (if he has not already been so required by the tribunal) to pay the person whom he has failed to re-employ a sum not exceeding an amount equal to six months' remuneration at the rate at which his last remuneration was payable to him by the employer, and any amount so required by the tribunal to be paid or so ordered by the Court to be paid shall be recoverable as if it were a fine imposed by such Court:

Provided further that in any proceedings under this section it shall be a defence for an employer to prove that the person formerly employed by him did not apply to the employer for reinstatement within a period of two months <sup>1</sup>[from the termination of his national service, or service

<sup>1</sup> Subs., National Service (European British Subjects) Amendment Ordinance, 1941 (6 of 1941).

<sup>2</sup> Words omitted, *ibid.*

*National Service (European British Subjects) Act, 1940—contd.*

in the armed forces or training as a cadet where such training is not followed by service in the armed forces, as the case may be].

<sup>1</sup>[(2) The duty imposed by sub-section (1) upon an employer to reinstate in his employment a person such as is described in that sub-section shall attach to an employer who before such person is actually called up or taken into service terminates his employment in circumstances such as to indicate an intention to evade the duty imposed by that sub-section, and such intention shall be presumed until the contrary is proved if the termination of employment takes place after the issue of a notice under sub-section (1) of section 4 upon such person.]

9. (1) The Central Government shall constitute for such <sup>Tribunals.</sup> areas and in such places as it thinks fit tribunals to hear and decide any matters referred to it under the proviso to section 8 <sup>2</sup>[and any appeals made to it under sub-section (4) of section 6A or section 7A or section 7B].

(2) Each tribunal shall consist of three members to be nominated by the Central Government, of whom one who shall be Chairman of the tribunal shall be a member of a Civil Service of the Crown not lower in status than a District and Sessions Judge, one shall be a military officer not below the rank of Brigadier, and one shall be a European British subject, not being a servant of the Crown.

(3) No person serving as a member of a National Service Advisory Committee constituted under section 5 shall while so serving be a member of a tribunal.

(4) A tribunal may meet at such times and places as it thinks fit and shall meet when required to do so by the competent authority.

<sup>3</sup>[(5) The Chairman of the tribunal and any one other member of the tribunal shall constitute a quorum.]

<sup>4</sup>[(6)] A tribunal shall have the powers of a Civil Court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, and compelling the discovery and production of documents, and shall be deemed to be a Civil Court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898.

<sup>1</sup>Added, National Service (European British Subjects) Amendment Ordinance, 1941 (6 of 1941).

<sup>2</sup>Added, National Service (European British Subjects) Amendment Ordinance, 1940 (5 of 1940).

<sup>3</sup>Ins., s. 11, 1941.

<sup>4</sup>Original sub-section (5) was re-numbered (6), *ibid.*



*National Service (European British Subjects) Act, 1940—contd.*

Penalties and  
procedure.

10. (1) Whoever wilfully fails to comply with any notice issued under section 4 <sup>1</sup>[or section 7] or with any order given under <sup>2</sup>[sub-section (8) of section 5, or with any direction given by the authority specified in a notice issued under section 7 as to his entering employment in a civilian capacity], shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

<sup>1</sup>[(2) Whoever, having entered civilian employment in pursuance of a direction given by the authority specified in a notice issued under section 7, leaves that employment without the permission of the competent authority shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(3) Whoever, being an employer under whom any person enters employment in a civilian capacity in pursuance of a notice issued under section 7, fails to comply in all respects with the terms of service laid down under section 7B in respect of such person, shall, without prejudice to any civil liability incurred by such failure, be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.]

<sup>3</sup>[(4) ] No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act.

Service of  
notices.

11. Any notice to be served on any person for the purposes of this Act may be sent by post addressed to that person at his last known address.

Bar of legal  
proceedings.

<sup>4</sup>[11A. No suit or other proceeding shall lie in any Court in respect of anything done or in good faith intended to be done under this Act.]

Power to make  
rules.

12. (1) The Central Government may, by notification in the official Gazette, make rules for the purpose of giving effect to the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, the Central Government may make rules prescribing the forms of the notices referred to in sub-section

<sup>1</sup> Ins., s. 12 of the National Service (European British Subjects) Amendment Ordinance, 1940 (5 of 1940).

<sup>2</sup> Subs., *ibid.*

<sup>3</sup> Original sub-section (2) was re-numbered (4), *ibid.*

<sup>4</sup> Ins., s. 13, *ibid.*

*National Service (European British Subjects) Act, 1940—concl'd.  
War Donations and Investments (Companies) Act, 1940.*

(1) of section 4 <sup>1</sup>[and sub-section (1) of section 7], the amount and manner of payment of the allowances referred to in sub-section (4) of section 4 <sup>1</sup>[and sub-section (5) of section 7, the form of and the particulars to be contained in a claim preferred under section 6A, the conditions referred to in sub-section (1) of section 7B, the rights to be prescribed under section 7C], and the procedure to be followed <sup>2</sup>[in appeals under sub-section (4) of section 6A or section 7A or section 7B or references under the proviso to section 8 to a tribunal].

<sup>3</sup>[(3) In making any rule under this section the Central Government may provide that a contravention of the rule shall be punishable with imprisonment for any term not exceeding six months, or with fine not exceeding one thousand rupees, or with both.]

13. Nothing in this Act shall apply to any person—

Act not to  
apply to cer-  
tain persons.

- (a) for the time being confined in a prison or a lunatic asylum, or
- (b) who is under the age of eighteen or over the age of fifty.

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ACT No. XXXVII OF 1940.

THE WAR DONATIONS AND INVESTMENTS (COM-  
PANIES) ACT, 1940.

*(Received the assent of the Governor General on the 27th  
November, 1940.)*

*An Act to enable companies in British India to make dona-  
tions to public funds formed, and to make investments  
in Government loans floated, for the purpose of assisting  
the prosecution of the present war.*

WHEREAS it is expedient to enable companies in British India to make donations to public funds formed, and to make investments in Government loans floated, for the purpose of assisting the prosecution of the present war ;

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<sup>1</sup> Ins., s. 14 of the National Service (European British Subjects) Amendment Ordinance, 1940 (5 of 1940).

<sup>2</sup> Subs., *ibid.*

<sup>3</sup> Added, *ibid.*

*War Donations and Investments (Companies) Act, 1940—contd.*

AND WHEREAS it is also expedient to remove doubts as to the legality of such donations and investments where already made ;

It is hereby enacted as follows :—

Short title.

1. This Act may be called the War Donations and Investments (Companies) Act, 1940.

Interpretation.

2. In this Act “Government loan” includes a loan floated by the Government of the United Kingdom.

Power of companies to make donations and investments.

3. Any company formed and registered under the Indian Companies Act, 1913, or under the Indian Companies Act, 1882, or under the Indian Companies Act, 1866, or under any Act or Acts repealed thereby may, notwithstanding anything contained in the Indian Companies Act, 1913, and notwithstanding that the memorandum of association or the articles of association of the company do not enable it so to do, by special resolution authorise the making of a donation from the company's assets to a public fund formed, or the making of an investment of the company's assets in a Government loan floated, for the purpose of assisting the prosecution of the present war.

Validation of donations and investments already made.

4. Any donation to a public fund formed, and any investment in a Government loan floated, for the purpose of assisting the prosecution of the present war made by any company to which this Act applies between the 3rd day of September, 1939, and the commencement of this Act shall be as valid in all respects as if it had been made in accordance with the provisions of section 3, and after the commencement of this Act.

Decision of doubts.

5. If any question arises whether for the purposes of this Act a loan is a Government loan floated for the purpose of assisting the prosecution of the present war or whether a fund is a public fund formed for the purpose of assisting the prosecution of the present war, the question shall be decided by the Central Government whose decision shall be final.

ACT No. XII of 1942.

THE INDIAN FINANCE ACT, 1940.

(Received the assent of the Governor General on the 26th March, 1942.)

*An Act to \* \* \* \* and to continue the charge and levy of excess profits tax and fix the rate at which excess profits tax shall be charged.*

WHEREAS it is expedient to \* \* \* \* and to continue the charge and levy of excess profits tax and fix the rate at which excess profits tax shall be charged ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Indian Finance Act, Short title and extent. 1942.

(2) It extends to the whole of British India.

\* \* \* \* \*

XV of 1940.

10. (1) If before the 1st day of July, 1942, or within thirty days of the date on which any excess profits tax, charged under the provisions of the Excess Profits Tax Act, 1940, at the rate of sixty-six and two-thirds per cent. becomes payable, whichever of these dates is later, a further sum not exceeding one-fifth of the amount of the said excess profits tax is deposited with the Central Government, the Central Government shall repay, at such date and subject to such conditions as it may hereafter determine, so much of the said excess profits tax as shall be equal to one-tenth of the amount thereof or to one-half of such further sum deposited, whichever is the less : Funding of one-tenth of Excess Profits Tax.

Provided that, if the said excess profits tax is thereafter reduced, whether by relief given in respect of a deficiency of profits, or by relief given in respect of double excess profits taxation or otherwise, and whether by refund or otherwise, the portion of the tax to be repaid under this section shall be correspondingly reduced :

Provided further that if the said excess profits tax is so reduced, the maximum sum that may be deposited with the Central Government under this section shall also be correspondingly reduced :

Provided further that the provisions of this section shall apply in respect of excess profits tax to which the section applies which became payable before the commencement of this Act if the further sum referred to herein is deposited before the 1st day of July, 1942 :

*Indian Finance Act, 1940—contd.*

XV of 1940. Provided further that in relation to excess profits tax payable under the Excess Profits Tax Act, 1940, in respect of any profits which are also liable to assessment to excess profits tax under the law in force in the United Kingdom it shall be unnecessary to deposit the further sum referred to in this section, and the amount repayable by the Central Government under this section shall, subject to the first proviso, be one-tenth of the amount of the excess profits tax payable at the rate of sixty-six and two-thirds per cent. under the Excess Profits Tax Act, 1940.

(2) Any sum deposited with the Central Government under sub-section (1) shall carry simple interest at the rate of two per cent. per annum and shall be repaid within twelve months of the date of termination of the present hostilities.

(3) The Central Government may, by notification in the official Gazette, make rules for carrying out the purposes of this section and for prescribing the manner and conditions referred to in sub-section (5) of section 8.

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**PART III**  
**ORDINANCES**

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ORDINANCE No. II OF 1940.

THE NATIONAL SERVICE (TECHNICAL PERSONNEL) ORDINANCE, 1940.

AN

ORDINANCE

*to give power to control the employment and distribution of technical personnel in British India.*

*[ Published in the Gazette of India Extraordinary of the 29th June, 1940. ]*

WHEREAS an emergency has arisen which renders it necessary to take power to require industrial undertakings to release technical personnel for employment in factories under the Crown or declared to be engaged on work of national importance, and to require technical personnel to undertake employment in any such factory ;

26 Geo. 5, c. 2.

NOW, THEREFORE, in exercise of the powers conferred by section 72 of the Government of India Act, as set out in the Ninth Schedule to the Government of India Act, 1935, the Governor General is pleased to make and promulgate the following Ordinance :—

1. (1) This Ordinance may be called the National Service (Technical Personnel) Ordinance, 1940.

Short title,  
extent and  
commence-  
ment.

(2) It extends to the whole of British India, and applies also to <sup>2</sup>\*British subjects in any part of India.

(3) It shall come into force at once.

2. In this Ordinance, unless there is anything repugnant in the subject or context,—

Definitions.

<sup>3</sup>[(a) “ technical personnel ” includes all persons normally employed, or declared by a Tribunal to be normally employed, in any of the capacities specified in the Schedule, and any such person, or class of persons undergoing training

<sup>1</sup> For application of the Ordinance to different areas, see Vol. III, pp. 119, 270 and 271.

<sup>2</sup> The word “ Indian ” omitted by s. 2 of the National Service (Technical Personnel) Amendment Ordinance, 1942 (6 of 1942).

<sup>3</sup> Subst. for the original clause, by s. 3, *ibid.*



*National Service (Technical Personnel)*—contd.

in any such capacity, as may be declared by the Central Government by notification in the official Gazette to be technical personnel for the purposes of this Ordinance ; but does not include any person who is not liable under section 3 to undertake employment in the national service ;]

- (b) “factory” means a factory as defined in clause (j) of section 2 of the Factories Act, 1934, <sup>1</sup>[and xxv of 1934, includes any place deemed to be a factory in pursuance of a declaration made under sub-section (1) of section 5 of that Act] ;
- (c) “Indian British subject” means any subject of His Majesty in India except a British subject of European descent in the male line born, naturalised or domiciled in the British Islands or in any Dominion as defined in the Statute of Westminster, 1931, or in any colony except Ceylon ;
- <sup>2</sup>[(d) “industrial undertaking” means—
- (i) any concern engaged in—
    - (a) the manufacture or production of any article or commodity,
    - (b) the supply or distribution of light, power or water,
    - (c) the supply or maintenance of any form of mechanised transport ;
  - (ii) any concern engaged in installing equipment or erecting premises for the purposes of or preparing and producing designs for or testing the products of any concern of the nature specified in sub-clause (i) ;
  - (iii) any training establishment ;
  - (iv) any other undertaking which the Central Government may, by general or special declaration notified in the official Gazette, declare to be an industrial undertaking ;]

<sup>2</sup>[(e) “employment in the national service” means employment undertaken in pursuance of an order passed under clause (b) or clause (c) of

<sup>1</sup> Added by s. 3 of the National Service (Technical Personnel) Amendment Ordinance, 1942 (6 of 1942).

<sup>2</sup> Subst., *ibid.*

*National Service (Technical Personnel)*—contd.

- sub-section (1) of section 7 or under clause (b) of sub-section (1) or sub-section (2) of section 10 ;]
- (f) “notified factory” includes any factory under the Crown and any factory declared by notification <sup>1</sup>[or order in writing] under section 4 to be engaged on work of national importance ;
- (g) “prescribed” means prescribed by rules made under this Ordinance ;
- (h) “Special Tribunal” means a Special Tribunal constituted by the Central Government under section 12 ;
- <sup>2</sup>[(i) “technical post under the Crown” means any post under the Crown the holder of which is required to possess a knowledge of one or more of the trades <sup>1</sup>[or occupations] specified in the Schedule ;
- (j) “training establishment” means any technical institution or training centre established, selected or approved by the Central Government for the training of technical personnel ;]
- <sup>3</sup>[(k)] “Tribunal” means a National Service Labour Tribunal constituted by the Central Government under section 5.

3. All technical personnel over the age of eighteen and under the age of fifty years, being Indian British subjects, <sup>4</sup>[or Asiatic immigrants from any Asiatic territory outside India notified in this behalf by the Central Government in the official Gazette], and not being members of His Majesty's regular Naval, Military or Air Forces, or members of any Reserve of any such Force, who are liable under their term of service in such Reserve to be called up for service at any time and not only on partial or general mobilization, shall be liable under this Ordinance to undertake employment in the national service ;

Liability for  
employment  
in the national  
services.

Provided that no person in the service of the Crown shall be so liable except with the written consent of the Government under which he is serving.

<sup>1</sup> Inserted by section 3 of the National Service (Technical Personnel) Amendment Ordinance, 1942 (6 of 1942).

<sup>2</sup> Ins. by s. 2 of the National Service (Technical Personnel) Amendment Ordinance, 1940 (11 of 1940).

<sup>3</sup> Original clause (i) re-lettered (k), *ibid.*

<sup>4</sup> Ins. by s. 4 of the National Service (Technical Personnel) Amendment Ordinance, 1942 (6 of 1942).

*National Service (Technical Personnel)*—contd.

Notified  
factories.

4. (1) The Central Government may, by notification in the official Gazette, <sup>1</sup>[or by order in writing], declare any factory, which is engaged in the production of munitions or other war supplies or in work which, in the opinion of the Central Government, is likely to assist the efficient prosecution of the war, to be a factory engaged on work of national importance, and thereupon such factory shall be a notified factory.

(2) <sup>2</sup>[Every notified factory, training establishment or department under the Crown shall be eligible to apply in the prescribed form] to a Tribunal or to the Central Government for technical personnel <sup>3</sup>[and, having so applied, shall take into its employment such technical personnel within such period and on such terms and conditions as the Tribunal or the Central Government, as the case may be, may direct.]

<sup>4</sup>[(3) The Central Government may, as a condition of declaring or of continuing to recognise any factory as a notified factory, by general or special order, require that the factory shall make such provision as may be specified in the order in regard to the terms of service and conditions of work of its employees or for affording technical instruction and training.]

National  
Service  
Labour  
Tribunals.

5. (1) The Central Government shall constitute for such areas and in such places as it thinks fit National Service Labour Tribunals (in this Ordinance referred to as Tribunals) to exercise the functions assigned to such Tribunals by this Ordinance.

(2) A Tribunal shall consist of <sup>5</sup>[a chairman and not less than two other] members all of whom shall be servants of the Crown and shall be appointed by the Central Government :

<sup>6</sup>[Provided that for the purposes of this sub-section officers of Company-managed railways shall be deemed to be servants of the Crown.]

7\*                      \*                      \*                      \*                      \*

<sup>1</sup> Ins. by s. 5 of the National Service (Technical Personnel) Amendment Ordinance, 1942 (6 of 1942).

<sup>2</sup> Subst., *ibid.*

<sup>3</sup> Added by s. 3 of the National Service (Technical Personnel) Amendment Ordinance, 1940 (11 of 1940).

<sup>4</sup> Added by s. 5 of the National Service (Technical Personnel) Amendment Ordinance, 1942 (6 of 1942).

<sup>5</sup> Subst. for the words "not less than four" by s. 4 of the National Service (Technical Personnel) Amendment Ordinance, 1940 (11 of 1940).

<sup>6</sup> This proviso was added, *ibid.*

<sup>7</sup> Sub-section (3) was omitted, *ibid.*

*National Service (Technical Personnel)—contd.*

<sup>1</sup>[(3)] Any two members of the Tribunal shall constitute a quorum.]

<sup>2</sup>[(4)] A Tribunal shall have power to associate with itself in its deliberations such other persons as it thinks fit under such conditions as may be prescribed.

<sup>3</sup>[(5)] A Tribunal may meet at such times and places as it thinks fit and shall meet when required to do so by the Central Government.

v of 1898.

<sup>3</sup>[(6)] A Tribunal shall have the powers of a Civil Court for the purpose of recording evidence, administering oaths, enforcing the attendance of witnesses and compelling the discovery and production of documents, and shall be deemed to be a Civil Court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898 <sup>3</sup>[and a court for the purposes of clause (aa) of the proviso to section 200 of that Code].

<sup>4</sup>[(7)] A Tribunal may order any person, included within the definition of technical personnel, to submit himself to be examined by such medical authority as may be prescribed.

<sup>3</sup>[(8)] A Tribunal may, subject to the prescribed conditions and limitations, delegate to its chairman any of its functions].

6. <sup>5</sup>[(1)] A Tribunal may, subject to any rules made in this behalf under section 19, take steps to ascertain particulars of the technical personnel employed in any industrial undertaking (including a notified factory), the suitability of such personnel for employment in the national service, and the capacity of the undertaking to release such personnel or any part thereof for such employment, having regard to the nature of the work in which such personnel or part is engaged.] Enquiries by  
Tribunals.

<sup>1</sup> The original sub-section (4) was renumbered (3) by s. 4 of Ord. 11 of 1940 and the present sub-section was subst. by s. 6 of the National Service (Technical Personnel) Amendment Ordinance, 1942 (6 of 1942).

<sup>2</sup> The original sub-sections (5), (6) and (7) were renumbered respectively (4), (5) and (6), by s. 4 of the National Service (Technical Personnel) Amendment Ordinance, 1940 (11 of 1940).

<sup>3</sup> Added by s. 6 of the National Service (Technical Personnel) Amendment Ordinance, 1942 (6 of 1942).

<sup>4</sup> The original sub-section (8) was re-numbered (7) by s. 4 of the National Service (Technical Personnel) Amendment Ordinance, 1940 (11 of 1940).

<sup>5</sup> Subst. by s. 5, *ibid.*

*National Service (Technical Personnel)*—contd.

(2) For the purposes of sub-section (1), the Tribunal may—

- (a) summon the owner or manager of any industrial undertaking or any employee of such undertaking to appear before it and furnish such information as it may require,<sup>1\*</sup>
- (b) authorise one of its members <sup>2</sup>[or an Inspector appointed by it] to enter upon and inspect any premises occupied by such undertaking and call for any information whether documentary or otherwise which appears to it to be necessary,
- <sup>3</sup>[(c) authorise <sup>2</sup>[an Inspector appointed by it or] any person who belongs to the managerial or supervisory class of technical personnel to enter upon any premises occupied by such undertaking and test the technical skill of such persons as the Tribunal may by order in writing direct, and
- (d) require any industrial undertaking to afford such facilities as the Tribunal may specify for testing the skill of any technical personnel whether such personnel is employed by such undertaking or not,]

and the owner or manager of the industrial undertaking and any employee of such undertaking shall comply with any requisition made in this behalf by or under authorisation from the Tribunal.

<sup>4</sup>[7. (1) Subject to any rules made in this behalf under section 19, a Tribunal may, by order in the prescribed form,—

- (a) require the owner or manager of any industrial undertaking other than a notified factory or a training establishment to release such technical personnel as it may specify for employment in the national service,
- (b) direct technical personnel, who are either unemployed or are not already employed in a notified factory, training establishment or tech-

Release,  
disposal and  
training of  
technical  
personnel by  
order of  
Tribunal.

<sup>1</sup> The word "and" omitted by section 5 of the National Service (Technical Personnel) Amendment Ordinance, 1940 (11 of 1940).

<sup>2</sup> Ins. by s. 7 of the National Service (Technical Personnel) Amendment Ordinance, 1942 (6 of 1942).

<sup>3</sup> Ins. by s. 5 of the National Service (Technical Personnel) Amendment Ordinance, 1940 (11 of 1940).

<sup>4</sup> Subst. by s. 8 of the National Service (Technical Personnel) Amendment Ordinance, 1942 (6 of 1942).

*National Service (Technical Personnel)*—contd.

nical post under the Crown, to undertake employment in the national service in any notified factory or training establishment within the limits of its jurisdiction, or in any factory or technical post under the Crown in any part of British India,

- (c) transfer technical personnel in respect of whom an order has been passed under clause (b) from one form or place of employment in the national service to another,
- (d) direct technical personnel, whether employed or unemployed, to present themselves at such place and time as may be specified in the order for interview or inquiry and, if so required, for submission to a test of their technical skill,
- (e) require the owner or manager of any industrial undertaking (other than an undertaking under the Crown) to provide training for such numbers of persons as technical personnel on such terms and conditions as may be specified in the order,

and such order shall be complied with within such period or on such date as may be specified in the order.

(2) No person included in the definition of technical personnel, who has been directed under sub-section (1) to undertake employment in the national service, shall be discharged from or leave his employment in such service unless the employer or the person concerned, as the case may be, has previously obtained the permission in writing of the Tribunal.]

8. The terms of service of technical personnel taken into employment in the national service in a notified factory <sup>1</sup>[, training establishment or technical post under the Crown] in pursuance of any order passed <sup>2</sup>[under clause (b) or clause (c) of sub-section (1) of section 7] shall be laid down by the Tribunal in each case subject to such conditions as may be prescribed, and such conditions may provide for the preservation of any rights which such technical personnel may have under any provident or superannuation fund or other scheme for the benefit of employees maintained by the undertakings from which they are released.

Terms of service of technical personnel in notified factories.

<sup>1</sup> Ins. by s. 9 of the National Service (Technical Personnel) Amendment Ordinance, 1942 (6 of 1942).

<sup>2</sup> Subst., *ibid.*

*National Service (Technical Personnel)*—contd.

## Appeals.

9. An appeal shall lie to the Central Government against any order passed by a Tribunal under <sup>1</sup>[clause (a), <sup>2</sup>[clause (b), clause (c) or clause (e) of sub-section (1) of section 7] or under] section 8 and the decision of the Central Government shall be final.

## Power of Central Government in respect of technical personnel.

10. (1) The Central Government may require a Tribunal to report what technical personnel, whether employed in industrial undertakings or otherwise, is available within its jurisdiction for employment in the national service, and may, <sup>3</sup>[whether or not a Tribunal has been so required to report] 4\* \* \* \*, by order in writing,—

<sup>5</sup>[(a) require any industrial undertaking by which technical personnel is employed to release such personnel as may be specified in the order for employment in the national service];

(b) direct <sup>5</sup>[any technical personnel] to <sup>6</sup>[undertake such employment in the national service as] may be specified in the order ;

<sup>3</sup>[(bb) direct that any technical personnel engaged in an industrial undertaking under conditions not amounting to employment in the national service shall, for the purposes of sub-section (3), be deemed to have been taken into employment in the national service] ;

<sup>7</sup>[and

(c) require any notified factory, notwithstanding that it has not made any application under sub-section (2) of section 4, to take into its employment such technical personnel within such period as may be specified in the order.]

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<sup>1</sup> Subst. by s. 7 of the National Service (Technical Personnel) Amendment Ordinance, 1940 (11 of 1940).

<sup>2</sup> Subst. by s. 10 of the National Service (Technical Personnel) Amendment Ordinance, 1942 (6 of 1942).

<sup>3</sup> Ins. by s. 11, *ibid.*

<sup>4</sup> The words “ after consultation with the Tribunal ” omitted by s. 8 of the National Service (Technical Personnel) Amendment Ordinance, 1940 (11 of 1940).

<sup>5</sup> Subst. by s. 11 of the National Service (Technical Personnel) Amendment Ordinance, 1942 (6 of 1942).

<sup>6</sup> Subst. by s. 8 of the National Service (Technical Personnel) Amendment Ordinance, 1940 (11 of 1940).

<sup>7</sup> Added, *ibid.*

*National Service (Technical Personnel)—contd.*

<sup>1</sup>[(2) The Central Government may, by order in writing, transfer technical personnel from one form or place of employment in the national service to another, and the employer and the personnel concerned shall comply with such order.]

(3) The terms of service of technical personnel taken into employment <sup>2</sup>[in the national service] in pursuance of an order made under sub-section (1) or transferred under sub-section (2) shall, subject to the conditions prescribed for the purposes of section 8, be laid down by the Central Government \* \* \* \* \*

(4) The Central Government may order any person who is required under sub-section (1) to undertake employment in <sup>4</sup>[the national service], or who is transferred under sub-section (2) from one <sup>5</sup>[form or place of employment] to another, to submit himself to be examined by such medical authority as may be prescribed.

6\* \* \* \* \*

<sup>7</sup>[(5)] No person included in the definition of technical personnel who has been directed <sup>8</sup>[under sub-section (1) or sub-section (2)] to undertake employment in the national service <sup>9</sup>\* \* \* \* shall be discharged from or leave his employment <sup>9</sup>\* \* \* \* unless <sup>10</sup>[the employer] or the person concerned, as the case may be, has previously obtained the permission in writing of the Central Government.

<sup>11</sup>[10A. (1) Where a person included in the definition of technical personnel is willing to undertake employment in any of the capacities specified in the Schedule in His Majesty's Forces or outside India, and the Central Government is satisfied that such person would if released be taken into

Release of technical personnel for employment overseas or in His Majesty's Forces.

<sup>1</sup> Subst. by s. 11 of the National Service (Technical Personnel) Amendment Ordinance, 1942 (6 of 1942).

<sup>2</sup> Ins. by s. 8 of the National Service (Technical Personnel) Amendment Ordinance, 1940 (11 of 1940).

<sup>3</sup> Certain words omitted by s. 11 of the National Service (Technical Personnel) Amendment Ordinance, 1942 (6 of 1942).

<sup>4</sup> Subst. by s. 8 of the National Service (Technical Personnel) Amendment Ordinance, 1940 (11 of 1940).

<sup>5</sup> Subst. by s. 11 of the National Service (Technical Personnel) Amendment Ordinance, 1942 (6 of 1942).

<sup>6</sup> Sub-section (5) omitted, *ibid.*

<sup>7</sup> Original sub-section (6) renumbered, *ibid.*

<sup>8</sup> Ins., *ibid.*

<sup>9</sup> Certain words omitted, *ibid.*

<sup>10</sup> Subst., *ibid.*

<sup>11</sup> Ins. by s. 12, *ibid.*



*National Service (Technical Personnel)—contd.*

such employment and, in the case of employment outside India, that the employment to be undertaken is of national importance, the Central Government may by order in writing require the owner or manager of any industrial undertaking by which such person is for the time being employed to release him for such employment.

(2) Subject to any rules made in this behalf under section 19, a Tribunal may exercise the powers conferred on the Central Government by sub-section (1) in respect of technical personnel employed in any industrial undertaking other than an undertaking under the Crown.

(3) For the purposes of section 11, a person who has been released on a requirement under this section shall be deemed to have been released for employment in the national service.]

Reinstatement.

11. (1) It shall be the duty of any employer by whom a person, who has been released for employment in the national service on the requirement of a Tribunal or the Central Government, was employed to reinstate him in his former employment on the termination of that service in an occupation and under conditions not less favourable to him than those which would have been applicable to him had he not been so released for employment in the national service :

Provided that, if for any reason the reinstatement of such person is represented by the employer to be impracticable, either party may refer the matter to a Special Tribunal and the Special Tribunal shall after due consideration pass an order either exempting the employer from the provisions of this sub-section or requiring him to re-employ such person on such terms as it thinks suitable or to pay to such person a sum in compensation for failure to re-employ him not exceeding an amount equal to six months' remuneration at the rate at which his last remuneration was payable to him by the employer.

(2) If any employer fails to obey an order passed by a Special Tribunal under the proviso to sub-section (1), he shall be punishable with fine which may extend to one thousand rupees, and the Court by which he is convicted may, in addition to any other penalty, order him (if he is not already so required by the Special Tribunal) to pay the person whom he has failed to re-employ a sum not exceeding an amount equal to six months' remuneration at the rate at which his last remuneration was payable to him by the employer ; and any amount so required by the Special

*National Service (Technical Personnel)—contd.*

Tribunal to be paid, or so ordered by the Court to be paid, shall be recoverable as if it were a fine imposed by such Court :

Provided that in any proceedings under this sub-section it shall be a defence for an employer to prove that the person formerly employed by him did not apply to him for re-instatement within a period of two months from the termination of the employment in the national service for which such person was released.

12. (1) The Central Government shall constitute for such areas and in such places as it thinks fit Special Tribunals, to hear and decide any matters referred to it under the proviso to sub-section (1) of section 11.

(2) A Special Tribunal shall consist of three members to be nominated by the Central Government, of whom one, who shall be chairman of the Special Tribunal, shall be a member of the civil service of the Crown not lower in status than a District and Sessions Judge.

(3) No person serving as a member of a Tribunal shall, while so serving, be a member of a Special Tribunal.

(4) A Special Tribunal may meet at such times and places as it thinks fit and shall meet when required to do so by the Central Government.

(5) A Special Tribunal shall have the powers of a Civil Court for the purpose of receiving evidence, administering oaths, enforcing the attendance of witnesses and compelling the discovery and production of documents, and shall be deemed to be a Civil Court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898.

v of 1898.

13. (1) <sup>1</sup>[Subject to any rules made in this behalf under section 19, a Tribunal] may require any industrial undertaking (including a notified factory) <sup>2</sup>\* \* \* to post before a specified date and to keep posted on its premises notices making known <sup>3</sup>\* \* \* the provisions of <sup>4</sup>[sub-sections (1), (2) and (3) of this section] and intimating also the place to which applications to the Tribunal may be addressed.

Relinquish-  
ment of  
employment  
by, dismissal  
of, and en-  
gagement by  
industrial  
undertakings  
of, technical  
personnel.

<sup>1</sup> Subst. by s. 13 of the National Service (Technical Personnel) Amendment Ordinance, 1942 (6 of 1942).

<sup>2</sup> The words "in the area" omitted, *ibid.*

<sup>3</sup> The words "to its employees" omitted, *ibid.*

<sup>4</sup> Subst. by s. 9 of the National Service (Technical Personnel) Amendment Ordinance, 1940 (11 of 1940).

*National Service (Technical Personnel)—contd.*

<sup>1</sup>[(2) After any such notice has been posted no person included within the definition of technical personnel who is either employed in or is undergoing training in that undertaking shall leave his employment or training unless he has previously obtained the permission in writing of the Tribunal, and if any person leaves his employment or training without such permission, he may, without prejudice to his liability under section 14, be ordered by the Tribunal to return to his employment or training.]

<sup>2</sup>[(2A) Where the Tribunal refuses permission to leave employment, the Tribunal may, of its own motion or on application by the person refused permission, lay down subject to the prescribed conditions the terms of service on which the employer shall continue to retain him in employment, and the employer shall not thereafter, notwithstanding anything contained in sub-section (3), discharge, dismiss, suspend or release such person without the previous permission of the Tribunal.]

(3) No owner or manager of an industrial undertaking (including a notified factory) situated within an area in respect of which a Tribunal has been constituted shall, <sup>3</sup>[save as may be otherwise prescribed,] discharge, dismiss, <sup>1</sup>[suspend, release or remove from one factory to another] any person included in the definition of technical personnel, unless he has given fifteen days' previous notice in writing of the contemplated discharge, dismissal, <sup>1</sup>[suspension, release or removal] to the Tribunal.

<sup>3</sup>[(4) Subject to any rules made in this behalf under section 19, a Tribunal may control the engagement of technical personnel by industrial undertakings (including notified factories) in such manner as it thinks fit.]

Penalties and  
procedure.

**14.** (1) Whoever contravenes any of the provisions of section 13, or wilfully fails to comply with any summons, requirement, direction or order of a Tribunal, a Special Tribunal or the Central Government under this Ordinance shall, save as provided in sub-section (2) of section 11, be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

<sup>1</sup> Subst. by s. 13 of the National Service (Technical Personnel) Amendment Ordinance, 1942 (6 of 1942).

<sup>2</sup> Ins., *ibid.*

<sup>3</sup> Ins. by s. 9 of the National Service (Technical Personnel) Amendment Ordinance, 1940 (11 of 1940).

*National Service (Technical Personnel)*—contd.

(2) No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence punishable under this Ordinance.

15. In any proceeding against an industrial undertaking for any offence punishable under this Ordinance or the rules made thereunder the owner of the undertaking and his agent or manager, if any, shall be jointly and severally liable to any penalty incurred under this Ordinance or the rules. Liability of owners, agents and managers.

16. Any summons, notice, direction or order to be given to any person for the purposes of this Ordinance may be served by being sent by post addressed to that person at his last known address. Service of notices and orders.

17. No suit, prosecution or other legal proceeding shall be instituted in any Court in respect of anything in good faith done or intended to be done under this Ordinance. Bar of proceedings.

18. The Central Government may, by notification in the official Gazette, direct that persons normally employed in capacities other than those specified in the Schedule shall be deemed to be technical personnel for the purposes of this Ordinance. Power to amend Schedule.

19. (1) The Central Government may, by notification in the official Gazette, make rules for carrying out the provisions of this Ordinance. Power to make rules.

(2) Without prejudice to the generality of the foregoing power, such rules may prescribe—

(a) the conditions governing the appointment of the persons referred to in sub-section <sup>1</sup>[(4)] of section 5 ;

(b) the medical authorities referred to in sub-section <sup>2</sup>[(7)] of section 5 and sub-section (4) of section 10 ;

<sup>3</sup>[(c) the conditions under and the manner in which the tests mentioned in clause (c) of sub-section (2) of section 6 and <sup>4</sup>[clause (d) of section 7] shall be carried out ;]

<sup>1</sup> Subst. for the brackets and figure “(5)” by s. 10 of the National Service (Technical Personnel) Amendment Ordinance, 1940 (11 of 1940).

<sup>2</sup> Subst. for the brackets and figure “(8)”, *ibid.*

<sup>3</sup> Ins., *ibid.*

<sup>4</sup> Subst. by s. 14 of the National Service (Technical Personnel) Amendment Ordinance, 1942 (6 of 1942).

*National Service (Technical Personnel)—contd.*

<sup>1</sup>[(d)] the conditions <sup>2</sup>[and limitations] governing the exercise of its functions by a Tribunal under sections 6, 7 and 8, <sup>3</sup>[sub-section (2) of section 10A and sub-section (2A) of section 13];

<sup>4</sup>[(e)] the manner of preferring appeals under section 9 and of making references under the proviso to sub-section (1) of section 11 ;

<sup>5</sup>[(f)] the matters requiring to be prescribed for the purposes of <sup>6</sup>[sub-sections (1), (3) and (4)] of section 13 ;]

<sup>7</sup>[(g)] the registers or other documents to be maintained or prepared by industrial undertakings (including notified factories) and by Tribunals, and the forms of <sup>8</sup>[applications,] notices and orders to be used for the purposes of this Ordinance.

(3) Any rule made under this section may provide that a contravention of the rule shall be punishable with imprisonment for any term not exceeding six months, or with fine not exceeding one thousand rupees, or with both.

Application  
of Ordinance  
to mines.

<sup>9</sup>[20. The provisions of this Ordinance and of the rules made thereunder shall apply in relation to mines, as defined in clause (f) of section 3 of the Indian Mines Act, 1923, as if all references throughout this Ordinance and the rules made thereunder to a factory were references to such a mine.] IV of 1923.

<sup>1</sup> Original clause (c) re-lettered (d) by s. 10 of the National Service (Technical Personnel) Amendment Ordinance, 1940 (11 of 1940).

<sup>2</sup> Ins. by s. 14 of the National Service (Technical Personnel) Amendment Ordinance, 1942 (6 of 1942).

<sup>3</sup> Added, *ibid.*

<sup>4</sup> Original clause (d) re-lettered (e) by s. 10 of the National Service (Technical Personnel) Amendment Ordinance, 1940 (11 of 1940).

<sup>5</sup> Ins., *ibid.*

<sup>6</sup> Subst. by s. 14 of the National Service (Technical Personnel) Amendment Ordinance, 1942 (6 of 1942).

<sup>7</sup> Original clause (e) re-lettered (g) by s. 10 of the National Service (Technical Personnel) Amendment Ordinance, 1940 (11 of 1940).

<sup>8</sup> Ins. by s. 14 of the National Service (Technical Personnel) Amendment Ordinance, 1942 (6 of 1942).

<sup>9</sup> Added by s. 11 of the National Service (Technical Personnel) Amendment Ordinance, 1940 (11 of 1940).

*National Service (Technical Personnel)*—contd.

## [THE SCHEDULE.]

[See section 2 (a).]

## TECHNICAL PERSONNEL.

*Managerial or Operational Staff.*

1. Aircraft Pilots.
2. Assistant Works Managers.
3. Chemists (industrial, metallurgical, analytical and technical research).
4. Civil Engineers.
5. Electrical Engineers.
6. Mechanical Engineers.
7. Production Engineers.
8. Works Managers.

*Supervisory Staff.*

1. Assistant Foremen.
2. Chargehands.
3. Chargemen.
4. Chemical Process Foremen.
5. Ground Engineers (Aircraft).
6. Inspectors (of all grades).
7. Inspectors of material.
8. Leading Hands.
9. Master Tailors and Master Cutters.
10. Overseers.
11. Storekeepers, Storeholders.
12. Supervising Mistries.
13. Supervisors.
14. Viewers.
15. Works Chemists.
16. Workshop Foremen.

*Skilled and Semi-skilled Trades and Occupations.*

1. Aircraft Mechanics.
2. Armature Winders.

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<sup>1</sup> Subst. by s. 15 of the National Service (Technical Personnel) Amendment Ordinance, 1942 (6 of 1942).

*National Service (Technical Personnel)—contd.*

3. Armourers.
4. Beater Mistries (Paper Mill).
5. Beltmen.
6. Blacksmiths, Angle Smiths, Spring Makers, Heavy Forge Smiths, Drop Stampers.
7. Boiler Cleaners.
8. Boiler Makers, Platers.
9. Boot and Shoe Makers.
10. Braziers.
11. Bricklayers.
12. Brick Moulders.
13. Brick and Tile Makers.
14. Bronzers and Lacquerers.
15. Carpenters, Joiners.
16. Chaulkers.
17. Chemical Assistants (Analysts).
18. Chemical Process Workers.
19. Coach Finishers.
20. Component Setters, Machine and Tool Setters.
21. Coopers.
22. Coppersmiths.
23. Core Makers.
24. Crane Drivers.
25. Cupola Men.
26. Curriers.
27. Cutlers.
28. Die Sinkers.
29. Draughtsmen (mechanical, structural, jig and tool).
30. Electricians.
31. Electroplaters.
32. Engine Drivers (Steam and Internal Combustion).
33. Engravers.
34. Erectors.
35. Estimators.
36. Examiners (Tool and Wood).
37. Filers, Vicemen.
38. Fillers (Brushware).

*National Service (Technical Personnel)—contd.*

39. Fitters.
40. Furnacemen, Firemen, Stokers.
41. Galvanisers.
42. Gauge and Tool fitters.
43. Hammermen, Holders up, Strikers.
44. Ingot Parters.
45. Instrument Mechanics.
46. Lead Burners.
47. Lithographers.
48. Lithoprinters.
49. Machine Mistries (Paper Mill).
50. Machinists, Drillers, Shapers, Millers, Planers, Polishers, Grinders.
51. Markers Out.
52. Masons.
53. Millwrights.
54. Motor Mechanics.
55. Motormen.
56. Moulders.
57. Painters.
58. Pattern Makers.
59. Petrol Mechanics.
60. Photo-Litho Operators.
61. Process Photographers.
62. Plumbers.
63. Precision Grinders, Gauge and Tool Grinders.
64. Press Workers.
65. Progressmen, Routers or Chasers.
66. Rate Fixers.
67. Riveters.
68. Riggers and Slingers.
69. Ropeworkers.
70. Saddlers.
71. Sawyers.
72. Slotters.
73. Storemen.
74. Surveyors.



*National Service (Technical Personnel)*—concl'd. *Currency.*

75. Tanners.
76. Tin Smiths.
77. Tool Hardeners.
78. Tool Makers.
79. Tracers, Ferro-printers.
80. Trimmers.
81. Tube Workers.
82. Turners.
83. Upholsterers.
84. Vulcanists.
85. Weighmen.
86. Welders, acetylene and electric.
87. Wheelers.
88. Wireless Operators.
89. Wiremen.
90. Wood Machinists.]

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ORDINANCE No. IV OF 1940.

THE CURRENCY ORDINANCE, 1940.

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AN

ORDINANCE

*to provide for the issue and putting into circulation of Government of India One Rupee notes.*

*[Published in the Gazette of India Extraordinary of the 24th July, 1940.]*

WHEREAS an emergency has arisen which renders it necessary to provide for the issue and putting into circulation of Government of India one rupee notes ;

Now, THEREFORE, in exercise of the powers conferred by section 72 of the Government of India Act, as set out in the Ninth Schedule to the Government of India Act, 1935, the Governor General is pleased to make and promulgate the following Ordinance :—

1. (1) This Ordinance may be called the Currency Ordinance, 1940.

(2) It extends to the whole of British India.

(3) It shall come into force at once.

2. Notwithstanding anything contained in the Reserve Bank of India Act, 1934, the Central Government may issue <sup>11 of 1934.</sup> Government of India notes of the denominational value of one rupee, and any such note shall be current in British

Short title,  
extent and  
commence-  
ment.

Government  
of India one  
rupee notes.

*Currency—contd. Civic Guards.*

III of 1906.

India in the same manner and to the same extent and as fully as the silver coin called the Government rupee issued under the provisions of the Indian Coinage Act, 1906, shall be legal tender in British India for the payment of any amount and shall be deemed to be included in the expression "rupee coin" for all the purposes of the Reserve Bank of India Act, 1934 :

II of 1934.

Provided that a Government of India one rupee note issued under this Ordinance shall be deemed not to be a currency note for any of the purposes of the Reserve Bank of India Act, 1934.

3. (1) To section 36 of the Reserve Bank of India Act, 1934, the following sub-section shall be added, namely :— Amendment of sections 30 and 31, Act II of 1934.

"(3) At the close of any week in which the amount of rupee coin held in the assets, as shown in the weekly accounts of the Issue Department for that week, is less than fifty crores of rupees or one-sixth of the total amount of the assets as so shown, whichever may be the greater, the Central Government may, with the consent of the Bank, deliver to the Bank rupee coin up to the amount of such deficiency against payment of legal tender value."

II of 1934.

(2) In section 38 of the Reserve Bank of India Act, 1934, the words "and as provided in that section." shall be omitted.

4. The provisions of sections 489A, 489B, 489C and 489D of the Indian Penal Code shall apply in respect of notes issued under this Ordinance as they apply in respect of currency notes and bank notes. Application of Indian Penal Code.

## ORDINANCE No. VIII OF 1940.

## THE CIVIC GUARDS ORDINANCE, 1940.

AN

## ORDINANCE

*to provide for the constitution of Civic Guards.*

[Published in the Gazette of India Extraordinary of the 16th August, 1940.]

WHEREAS an emergency has arisen which makes it necessary to provide for the constitution of Civic Guards ;

NOW, THEREFORE, in exercise of the powers conferred by section 72 of the Government of India Act, as set out

*Civic Guards—contd.*

in the Ninth Schedule to the Government of India Act, 1935, the Governor General is pleased to make and pro-<sup>26 Geo. 5. c. 2.</sup> mulgate the following Ordinance:—

Short title,  
extent and  
commence-  
ment.

1. (1) This Ordinance may be called the Civic Guards Ordinance, 1940.

(2) It extends to the whole of British India.

(3) It shall come into force at once.

Constitution  
of Civic  
Guards.

2. The District Magistrate in a district or the Commissioner of Police in a Presidency-town may constitute for the district or Presidency-town, as the case may be, a body to be called the Civic Guard, the members of which shall discharge such functions in relation to the protection of persons, the security of property or the public safety as may be assigned to them in accordance with the provisions of this Ordinance and the rules made thereunder.

Appointment  
of members.

3. The District Magistrate in a district or the Commissioner of Police in a Presidency-town may appoint as members of the Civic Guard so many persons, who are fit and willing to serve as such, as he is authorised by the Provincial Government to appoint and may appoint any such member to any office of command in the Civic Guard.

Functions of  
members.

4. The District Magistrate in a district or the Commissioner of Police in a Presidency-town may at any time call out a member of the Civic Guard for training or to discharge any of the functions assigned to the Civic Guard in accordance with the provisions of this Ordinance and the rules made thereunder.

Powers, pro-  
tection and  
control.

5. (1) A member of the Civic Guard when called out under section 4 shall have the same powers, privileges and protection as an officer of police appointed under any Act for the time being in force.

(2) No prosecution shall be instituted against a member of the Civic Guard in respect of anything done or purporting to be done by him in the discharge of his functions as such member, except with the previous sanction of the District Magistrate, or of the Commissioner of Police in a Presidency-town.

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<sup>1</sup> For application of this Ordinance to different areas, see Vol. III, pp. 158 and 279.

*Civic Guards—concl.*

6. The members of the Civic Guard, when called out under section 4 directly in aid of the police force, shall be under the control of the officers of such force, in such manner and to such extent as may be prescribed by rules made under section 8. Control by officer of police force.

7. If any member of a Civic Guard, on being called out under section 4, without sufficient excuse neglects or refuses to obey such order, or to discharge his functions as a member of the Civic Guard, or to obey any lawful order or direction given to him for the performance of his duties, he shall, on conviction by a competent Court, be punishable with fine which may extend to fifty rupees. Penalty.

8. The Provincial Government, or in any Chief Commissioner's Province other than British Baluchistan the Chief Commissioner, may make rules consistent with this Ordinance— Rules.

- (a) providing for the exercise by any police officer or other servant of the Crown of the powers conferred on the District Magistrate by section 4 of this Ordinance ;
- (b) providing for the exercise of control by officers of the police force over members of the Civic Guard when acting directly in aid of the police force ;
- (c) regulating the organisation, appointment, conditions of service, duties, discipline, arms, accoutrements and clothing of members of the Civic Guard and the manner in which they may be called out for service ;
- (d) conferring on members of the Civic Guard according to their office any powers, other than magisterial or judicial powers, exercisable by any person under any Central or Provincial Act ;
- (e) generally for giving effect to the provisions of this Ordinance.

<sup>1</sup> [9. For the purposes of this Ordinance and with effect from the commencement thereof the Presidency-town of Calcutta shall be deemed to include the tract of country defined in the notification, dated the 21st day of September, 1880, published in the official Gazette in pursuance of section 1 of the Calcutta Suburban Police Act, 1866, as the limits to which the operation of that Act is confined.] Presidency-town of Calcutta to include suburbs of town of Calcutta.

## ORDINANCE No. IX OF 1940.

## THE WAR RISKS (GOODS) INSURANCE ORDINANCE, 1940.

AN

## ORDINANCE

*to make certain provisions for the insurance of goods in British India against damage by enemy action.*

[Published in the Gazette of India Extraordinary of the 26th August, 1940.]

WHEREAS an emergency has arisen which renders it necessary to make certain provisions for the insurance of goods in British India against damage by enemy action ;

NOW, THEREFORE, in exercise of the powers conferred by section 72 of the Government of India Act as set out in the Ninth Schedule to the Government of India Act, 1935, <sup>26 Geo. 5,</sup> the Governor General is pleased to make and promulgate <sup>6. 2.</sup> the following Ordinance :—

Short title,  
extent and  
commence-  
ment.

1. (1) This Ordinance may be called the War Risks (Goods) Insurance Ordinance, 1940.

(2) It extends to the whole of British India.

(3) It shall come into force on such <sup>1</sup>date as the Central Government may, by notification in the official Gazette, appoint.

Definitions.

2. In this Ordinance, unless there is anything repugnant in the subject or context,—

(a) “ agricultural products ” means products of agriculture, horticulture or silviculture and includes growing crops, plants and trees ;

(b) “ goods ” means any materials, commodities or articles and includes materials or articles used in or for the construction of ships up to the time at which a ship after construction is launched ;

<sup>2</sup>[(c) “ war risks ” means such risks arising from—

(i) action taken by an enemy or action taken in combating an enemy or in repelling an imagined attack by an enemy,

<sup>1</sup> For Notifications applying this Ordinance to different districts and areas see Vol. III, pp. 158 and 276.

<sup>2</sup> Subs. War Risks (Goods) Insurance Amendment Ordinance, 1941 (12 of 1941).

*War Risks (Goods) Insurance—contd.*

- (ii) measures taken under proper authority to avoid the spreading of, or otherwise to mitigate, the consequences of damage occurring (whether accidentally or not) as the direct result of any such action as aforesaid,
- (iii) precautionary or preparatory measures taken under proper authority with a view to preventing or hindering the carrying out of any attack by an enemy, being measures involving a substantial degree of risk to property.
- (iv) precautionary or preparatory measures involving the doing of work on land and taken under proper authority in any way in anticipation of enemy action, being measures involving a substantial degree of risk to property,
- <sup>1</sup>[(v) precautionary or preparatory measures taken under proper authority with a view to denying facilities to an enemy, being measures involving a substantial degree of damage to or diminution of the value of property,]

as may be prescribed ;]

- (d) "live-stock" includes animals of any description ;
- (e) "prescribed" means prescribed by rules made under this Ordinance ;
- (f) "seller of goods" includes a seller of goods acting as an agent, and, in relation to any person carrying on the business of selling goods as an agent, any reference in this Ordinance to goods produced by him or to goods not produced by him shall be construed as including a reference to goods produced, or, as the case may be, not produced by his principal.

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**3. (1) Subject to the provisions of this section—**

- (a) the following goods shall, in relation to any person carrying on business in British India as a seller of goods of any description produced by him, be deemed to be goods insurable under this Ordinance, that is to say, all goods situated in British India <sup>1</sup>[or in that part of the territory of the

Goods Insurable under this Ordinance.

<sup>1</sup> Ins., War Risks (Goods) Insurance (Amendment) Ordinance, 1942 (14 of 1942).

<sup>2</sup> Clause omitted. War Risks (Goods) Insurance (Amendment) Ordinance, 1941 (12 of 1941).

*War Risks (Goods) Insurance—contd.*

State of Cochin which lies within the port limits of the Port of Cochin and the municipal limits of the Municipal Committee of Ernakulam and Muttancheri] being either—

- (i) goods of that description, or
  - (ii) goods used as material from which goods of that description are produced or as ingredients or component parts of goods of that description ;
- and

- (b) the following goods shall, in relation to any person carrying on business in British India as a seller of goods of any description not produced by him, be deemed to be goods insurable under this Ordinance, that is to say, all goods of that description being goods situated in British India<sup>1</sup> [or in that part of the territory of the State of Cochin which lies within the port limits of the Port of Cochin and the municipal limits of the Municipal Committee of Ernakulam and Muttancheri].

(2) In relation to a person carrying on in British India the business of selling agricultural products produced by him, all agricultural products and live-stock for the time being situated in British India<sup>1</sup> [or in that part of the territory of the State of Cochin referred to in sub-section (1)] shall, subject to the following provisions of this section, be deemed to be goods insurable under this Ordinance :

Provided that the Central Government may by general or special order direct that the provisions of section 7 shall not operate so as to require a person to be insured in respect of any goods which, in relation to that person would not, apart from the provisions of this sub-section, be goods insurable under this Ordinance.

(3) Things which, in relation to a person carrying on any business as a seller of goods, are at any time goods insurable under this Ordinance shall not cease to be goods so insurable by reason only that they are subsequently placed in or affixed to land under a contract of sale entered into by that person in the course of that business.

(4) The Central Government may, by notification in the official Gazette, direct that goods of any description specified in the notification shall, notwithstanding anything contained in this section, be deemed not to be goods insurable under this Ordinance.

<sup>1</sup> Ins., War Risks (Goods) Insurance (Amendment) Ordinance, 1942 (14 of 1942).

*War Risks (Goods) Insurance—contd.*

[4. (1) Save in so far as is otherwise expressly provided <sup>Ownership.</sup> in this Ordinance, any goods shall, subject to the provisions of this section, be deemed for the purposes of this Ordinance to be owned—

- (a) if the property in the goods is for the time being vested in a person in relation to whom they are insurable under this Ordinance, by that person ;
- (b) if the property in the goods is not so vested, by any person in relation to whom the goods are insurable under this Ordinance and who is for the time being entitled, either unconditionally or conditionally, to have the property in the goods vested in him :

Provided that where—

- (i) any goods would, under the foregoing provisions of this sub-section, be deemed to be owned by a person in whom the property therein is vested otherwise than in the course of a business carried on by him in British India, or who is entitled to have the property therein vested in him otherwise than in the course of such a business, and
- (ii) any person carrying on business in British India is for the time being entitled to sell the goods as an agent,

the goods shall be deemed to be owned by the last mentioned person.

(2) Where in the course of any business a ship is being, or has been, constructed under contract, and the ship or any part thereof or any goods appropriated for the construction thereof—

- (a) would, apart from the provisions of this sub-section, have been deemed for the purposes of this Ordinance to be owned at any time by the person from time to time carrying on the business ; or
- (b) have at any time been accepted, in pursuance of a contract made with him, by the person from time to time carrying on the business,

then, notwithstanding that they would not, apart from the said provisions, be deemed for the said purposes to be owned by the person from time to time carrying on the business, the ship and any part thereof and any goods so appropriated as aforesaid shall, subject to the provisions of sub-section

<sup>1</sup> Subs., War Risks (Goods) Insurance (Amendment) Ordinance, 1941 (12 of 1941).



*War Risks (Goods) Insurance—contd.*

(3), be deemed, in a case to which clause (a) applies, to continue to be owned by the person from time to time carrying on the business until the acceptance of the ship, in pursuance of the contract in question, by the person for whom it is being, or has been, constructed, and in a case to which clause (b) applies, to be owned by the person from time to time carrying on the business at all times between the acceptance referred to in the said clause (b) and the acceptance of the ship as aforesaid by the person for whom it is being, or has been, constructed.

(3) The provisions of sub-section (2) shall apply in relation to the construction under contract in the course of a business of part of a ship, not being part of a ship which is being, or has been, constructed by the person from time to time carrying on the business, as they apply in relation to the construction of a ship—

(a) with the substitution for references to a ship of references to part of a ship;

(b) where the contract for the part of the ship is with the person for whom the ship is being constructed, with the substitution for references to the acceptance of the ship under the contract in question of references to the acceptance of the ship under the contract for the construction thereof;

(c) where the contract for the part of the ship is with any other person, with the substitution for references to the acceptance of the ship under the contract in question of references to the acceptance of the part of the ship under the contract for the construction of the part by the person for whom it is being, or has been, constructed.

(4) Where the person from time to time carrying on a business receives any money, under a policy issued in pursuance of the War Risks (Goods) Insurance Scheme, in respect of the loss of or damage to a ship, part of a ship or goods which are deemed to be owned by him by virtue of sub-section (2) or sub-section (3), the money shall be held by him on trust for the person who apart from the provisions of those sub-sections would be deemed for the purposes of this Ordinance to be the owner of the ship, part or goods, subject, however, to any lien or charge which would otherwise be enforceable against the ship, part or goods, and subject also to the right to retain out of the money the

*War Risks (Goods) Insurance—contd.*

amount of any expenses reasonably incurred by the first mentioned person in making good any part of the loss or damage which he is liable to make good.]

5. (1) The Central Government may, by notification in the official Gazette, put into operation a scheme [in this Ordinance referred to as the War Risks (Goods) Insurance Scheme] whereby the Central Government undertakes, in relation to persons carrying on business in British India as sellers of goods, the liabilities of insuring such persons against war risks in respect of goods insurable under this Ordinance which are from time to time owned by such persons in the course of such business.

War Risks  
(Goods)  
Insurance  
Scheme.

<sup>1</sup>[(1A) The War Risks (Goods) Insurance Scheme may also extend—

(a) to the undertaking by the Central Government, in relation to any person carrying on business in British India as a seller of goods, of the liability of insuring such a person against war risks in respect of goods insurable under this Ordinance which are not owned by him but in which he has an interest arising in the course of that business ;

(b) without prejudice to the provisions of clause (a), to the undertaking by the Central Government, in relation to a person carrying on any business in British India, of the liability of insuring such a person against war risks in respect of—

(i) any goods situated in British India <sup>2</sup>[or in that part of the territory of the State of Cochin referred to in sub-section (1) of section 3] which are in his possession, otherwise than under a hire purchase agreement, for the purposes of that business,

(ii) any goods situated in British India <sup>2</sup>[or in that part of the territory of the State of Cochin referred to in sub-section (1) of section 3] which are subject to a mortgage in his favour held by him in the course of that business,

being in either case goods which are not owned by him but which are insurable under this Ordinance in relation to the person by whom they are owned ;]

<sup>1</sup> Ins., War Risks (Goods) Insurance (Amendment) Ordinance, 1941 (12 of 1941).

<sup>2</sup> Ins., War Risks (Goods) Insurance (Amendment) Ordinance, 1942 (14 of 1942).

*War Risks (Goods) Insurance—contd.*

<sup>2</sup>[(c) to the undertaking by the Central Government in relation to a person carrying on any business in British India of the liability of insuring such person against war risks in respect of any goods situated in British India or in that part of the territory of the State of Cochin referred to in sub-section (1) of section 3, which, having been sold in British India for export from British India, are in his possession for the purpose of being shipped out of India, and are goods which were prior to such sale insurable under this Ordinance in relation to the person by whom they were then owned.]

<sup>1</sup>[(1B) The War Risks (Goods) Insurance Scheme may also extend to the undertaking by the Central Government in relation to a Provincial Government of the liability of insuring the Provincial Government in such special cases as it thinks fit against war risks in respect of goods for the time being owned by the Provincial Government which are goods that would be goods insurable under this Ordinance if the Provincial Government were a person carrying on business in British India as a seller of goods of that description.]

(2) The War Risks (Goods) Insurance Scheme shall be such as to secure—

- (a) that any liability of the Central Government as insurers under the scheme is determined by a policy of insurance issued, in the prescribed form and in respect of a period not exceeding the period for the time being prescribed in this behalf, by a person acting on behalf of the Central Government,
- (b) that any premium under a policy so issued is payable at such rate as may be prescribed, and
- (c) that the amount of any one premium payable under a policy so issued is not less than such sum as may be prescribed in this behalf.

(3) Different forms of policies, different rates of premium and different periods may be prescribed under sub-section (2) in relation to different descriptions of goods and according to the place at which and the circumstances in which the goods insured are situated.

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<sup>1</sup> Ins., War Risks (Goods) Insurance (Amendment) Ordinance, 1942 (19 of 1942).

*War Risks (Goods) Insurance—contd.*

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2[5A. Where the rate of premium prescribed for the purposes of clause (b) of sub-section (2) of section 5 in respect of the period fixed for the purposes of clause (a) of that sub-section is altered, the rate as so altered shall be the rate applicable to all policies under which premiums are payable in respect of that period, notwithstanding that policies may have been issued on payment of premium at the rate in force before the alteration; and any policy issued on payment of premium at the rate in force before the alteration shall, when the rate has been increased by the alteration, cease to be valid on such date as may be fixed in this behalf by the Central Government unless before such date any deficiency in the amount paid as premium is made good by the policy-holder.]

Effect of  
change of  
rate of  
premium.

6. The Central Government may employ or authorise the employment of any person or firm to act as its agent for any of the purposes of this Ordinance and may pay to persons or firms so employed such remuneration as the Central Government thinks fit:

Employment  
of agents by  
Central  
Government.

Provided that no person or firm shall be so employed unless that person or firm is either—

(a) a member of an association prescribed in this behalf, or

(b) a person who in British India has a standing contract with underwriters who are members of the Society of Lloyd's, whereby such person is authorised within the terms of such contract to issue protection notes, cover notes or other documents granting insurance against war risks.

7. (1) No person shall, after such date as may be specified in this behalf by the Central Government by notification in the official Gazette, carry on any business in British India as a seller of goods unless, in respect of any goods insurable under this Ordinance which are for the time being owned by him in the course of that business, there is in force a policy of insurance against war risks issued in accordance with the War Risks (Goods) Insurance Scheme, whereby he is insured in respect of such goods for a sum not less than the value thereof for the time being:

Compulsory  
insurance.

<sup>1</sup> Clause omitted, War Risks (Goods) Insurance (Amendment) Ordinance, 1941 (12 of 1941).

<sup>2</sup> Ins., War Risks (Goods) Insurance (Amendment) Ordinance, 1942 (14 of 1942).

*War Risks (Goods) Insurance—contd.*

Provided that nothing in this sub-section shall restrict the carrying on of business as aforesaid by any person, if and so long as the value of all goods insurable under this Ordinance which are for the time being owned by him within one and the same Presidency-town or district in the course of that business does not exceed such amount as may be prescribed in this behalf :

<sup>1</sup>[Provided further that the Central Government may, by notification in the official Gazette, declare that the provisions of this sub-section shall not apply to the carrying on of business as aforesaid by any person in respect of goods of any description specified in such notification.]

(2) Whoever contravenes the provisions of sub-section (1) shall be punishable with fine which may extend to one thousand rupees and with a further fine which may extend to five hundred rupees for every day after the first on which the contravention continues.

Restriction on carrying on certain insurance business.

8. (1) After the date on which the War Risks (Goods) Insurance Scheme is put into operation, no person shall, except as a person authorised by the Central Government as their agent to issue policies in pursuance of that scheme, carry on the business of insuring persons carrying on business in British India, as sellers of goods, against war risks in respect of goods insurable under this Ordinance which are from time to time owned by such persons in the course of such business as is last mentioned.

(2) Whoever contravenes the provisions of sub-section (1) shall be punishable with fine which may extend to five thousand rupees and with a further fine which may extend to one thousand rupees for every day after the first on which the contravention continues.

War Risks (Goods) Insurance Fund.

9. (1) The Central Government shall establish a fund for the purposes of this Ordinance, to be called the War Risks (Goods) Insurance Fund, into which shall be paid all sums received by the Central Government by way of insurance premiums under the War Risks (Goods) Insurance Scheme <sup>1</sup>[or by way of payments made on composition of offences under section 12A], and out of which shall be paid all sums required for the discharge by the Central Government of any of its liabilities under the War Risks (Goods) Insurance Scheme, or for the payment by the Central Government of the remuneration and expenses of agents employed for the purposes of that scheme.

<sup>1</sup> Ins., War Risks (Goods) Insurance (Amendment) Ordinance, 1941 (12 of 1941).

*War Risks (Goods) Insurance—contd.*

(2) If at any time when a payment is to be made out of the said fund the sum standing to the credit of the fund is less than the sum required for the making of that payment an amount equal to the deficiency shall be paid into the fund as an advance out of general revenues.

(3) If at any time the amount standing to the credit of the fund exceeds the sum which, in the opinion of the Central Government, is likely to be required for the making of payments out of the fund, the excess shall be paid into general revenues.

(4) The Central Government shall prepare in such form and manner as may be prescribed, and shall publish either annually or at such shorter intervals as may be prescribed, an account of all sums received into and paid out of the War Risks (Goods) Insurance Fund.

10. <sup>1</sup>[(1) Any person authorised in this behalf by the Central Government may, for the purpose of ascertaining whether or not any person has insured any goods against war risks, and, if so, for what value,—

Power of  
Central  
Government to  
obtain  
information.

(a) require any person carrying on in British India the business of fire insurance or of a seller of goods to submit to him such accounts, books or other documents or to furnish to him such information as he may reasonably think necessary, or

(b) at any reasonable time enter any premises occupied by any person carrying on in British India any such business, and inspect the premises and require any person found therein who is for the time being in charge thereof to produce to him and allow him to examine such accounts, books or other documents as may relate to the business carried on in the premises or to furnish to him such information as he may reasonably think necessary.]

(2) Whoever wilfully obstructs any person in the exercise of his powers under this section or fails without reasonable excuse to comply with a request made thereunder shall, in respect of each occasion on which any such obstruction or failure takes place, be punishable with fine which may extend to five hundred rupees.

(3) Whoever, in purporting to comply with his obligations under this section, knowingly or recklessly makes a statement false in a material particular, shall be punishable with fine which may extend to one thousand rupees.]

11. Where goods of any description have been insured by a seller of goods for any period, and before that period has

Refund of  
premiums in  
certain cases.

<sup>1</sup> Subs., War Risks (Goods) Insurance (Amendment) Ordinance, 1941 (12 of 1941).

*War Risks (Goods) Insurance—concl'd.*

elapsed goods of that description have ceased, by virtue of a notification under sub-section (4) of section 3, to be goods insurable under this Ordinance, the person who has insured such goods shall be entitled to a proportionate refund of premium.

Limitation on prosecutions.

**12.** No prosecution for any offence punishable under this Ordinance shall be instituted against any person except by or with the consent of the Central Government or an authority authorised in this behalf by the Central Government.

Composition of offences.

<sup>1</sup>**[12A.** Any offence punishable under sub-section (2) of section 7 may, either before or after the institution of the prosecution, be compounded by the Central Government or by any authority authorised in this behalf by the Central Government, on payment for credit to the War Risks (Goods) Insurance Fund of such sum as the Central Government or such authority, as the case may be, thinks fit.]

Bar of legal proceedings.

**13.** No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Ordinance.

Power to make rules.

**14. (1)** The Central Government may, by notification in the official Gazette, make rules to carry into effect the provisions of this Ordinance.

(2) Without prejudice to the generality of the foregoing power, such rules may prescribe—

- (a) the risks which shall be deemed to be war risks for the purposes of clause (c) of section 2 ;
- (b) the forms of the policies of insurance referred to in sub-section (2) of section 5, the maximum period in respect of which such policies shall be issued, the rates at which premiums on such policies shall be payable, and the <sup>2</sup>[minimum amount which shall be payable as any one premium on such policies ;
- (c) the associations to be prescribed for the purposes of clause (a) of the proviso to section 6 ;
- (d) the maximum amount to be prescribed for the purposes of the proviso to sub-section (1) of section 7 ;
- (e) the form of and the manner of preparing the account referred to in sub-section (4) of section 9 and the intervals at which such account shall be published.

<sup>1</sup> Ins., War Risks (Goods) Insurance (Amendment) Ordinance, 1941 (12 of 1941).

<sup>2</sup> Subs., War Risks (Goods) Insurance (Amendment) Ordinance, 1942 (14 of 1942).

## ORDINANCE No. X of 1940.

## THE INDIAN FORCES (TRANSFER) ORDINANCE, 1940.

AN  
ORDINANCE

*to provide for the transfer from one corps or department to another of persons enrolled under the Indian Army Act, 1911.*

*[Published in the Gazette of India Extraordinary of the 30th August, 1940.]*

VIII of 1911.

WHEREAS an emergency has arisen which makes it necessary to provide for the transfer from one corps or department to another of persons enrolled under the Indian Army Act, 1911 ;

26 Geo. 5, c. 2.

NOW, THEREFORE, in exercise of the powers conferred by section 72 of the Government of India Act, as set out in the Ninth Schedule to the Government of India Act, 1935, the Governor General is pleased to make and promulgate the following Ordinance :—

1. (1) This Ordinance may be called the Indian Forces (Transfer) Ordinance, 1940. Short title and commencement.

(2) It shall come into force at once.

2. In this Ordinance,—

Definitions.

(a) “competent military authority” means the Commander-in-Chief of His Majesty’s Forces in India, or any officer designated by him in this behalf ;

(b) “the period of the present emergency” means the period beginning with the date of the promulgation of this Ordinance and ending with such date as the Central Government may, by notification in the official Gazette, declare to be the date on which the emergency which was the occasion of the passing of this Ordinance came to an end.

VIII of 1911.

3. During the period of the present emergency, any person enrolled under the Indian Army Act, 1911, may, notwithstanding anything to the contrary contained in the conditions of the service for which he is enrolled, be transferred without his consent to any corps or department by order of the competent military authority. Transfer from one corps or department to another.

4. At the end of the period of the present emergency any person transferred under the provisions of section 3 shall, if he continues in military service and so desires, be re-transferred by the competent military authority, as soon as may be convenient, to the corps or department in which he was serving at the time when he was first so transferred. Re-transfer to original corps or department.



## ORDINANCE No. IV OF 1941.

## THE AIR RAID PRECAUTIONS SERVICES ORDINANCE, 1941.

AN

## ORDINANCE

*to provide for the constitution of Air Raid Precautions Services.**[Published in the Gazette of India Extraordinary of the 10th May, 1941.]*

WHEREAS an emergency has arisen which makes it necessary to provide for the constitution of Air Raid Precautions Services to carry out measures for the protection of persons and property against hostile attack whether from the air or otherwise ;

NOW, THEREFORE, in exercise of the powers conferred by section 72 of the Government of India Act as set out in the Ninth Schedule to the Government of India Act, 1935, the Governor General is pleased to make and promulgate the following Ordinance :—

Short title,  
extent and  
commence-  
ment.

1. (1) This Ordinance may be called the Air Raid Precautions Services Ordinance, 1941.

(2) It extends to the whole of British India.

(3) It shall come into force at once.

Interpreta-  
tion.

2. In this Ordinance, unless there is anything repugnant in the subject or context, the expression "Provincial Government" means in relation to a Chief Commissioner's Province the Chief Commissioner.

Constitution  
of Air Raid  
Precautions  
Services.

3. The Provincial Government may constitute for any area a body to be called an Air Raid Precautions Service, and may appoint a person, hereinafter called the Controller, to command such body in such area.

Appointment  
of members  
and officers.

4. (1) Any authority authorized in this behalf by the Provincial Government may appoint as members of an Air Raid Precautions Service so many persons who are fit and willing to serve as such as it is authorized by the Provincial

<sup>1</sup> For application of the Ordinance to different areas see Vol. III, pp. 195, 277 and 278.

*Air Raid Precautions Services—contd.*

Government to appoint, and the Controller may appoint any such member to any office of command in the Service.

(2) Every person so appointed to be a member of an Air Raid Precautions Service shall be given a certificate of membership in such form as may be prescribed.

5. The Controller or any other authority authorized in this behalf by the Provincial Government may by order in writing dismiss summarily from an Air Raid Precautions Service any member thereof if, in the opinion of the Controller or such other authority, he fails to discharge satisfactorily his duties as such member, or is guilty of misconduct in the discharge of his duties as such member, or his continued presence in the Service is otherwise undesirable.

*Dismissal of members.*

6. (1) The members of an Air Raid Precautions Service shall perform such functions in relation to the carrying out of measures for the protection of persons and property against hostile attack as may be assigned to them by or under this Ordinance or any other law for the time being in force.

*Functions of members.*

(2) The Controller, or any person authorized in this behalf by the Controller or by the Provincial Government, may at any time call out a member of an Air Raid Precautions Service for training or to discharge any such function as aforesaid.

7. No suit, prosecution or other legal proceeding shall lie against the Controller or any member of an Air Raid Precautions Service for anything which is in good faith done or intended to be done in pursuance of this Ordinance or any rules made thereunder.

*Bar of suits.*

8. No prosecution shall be instituted against the Controller or any member of an Air Raid Precautions Service in respect of anything done or purporting to be done by him in discharge of his functions as such Controller or member except with the previous sanction of the Provincial Government.

*Protection against prosecution.*

9. If any member of an Air Raid Precautions Service, on being called out under sub-section (2) of section 6, without sufficient excuse neglects or refuses to obey such order or to discharge his functions as a member of the Air Raid Precautions Service or to obey any lawful order or direction given to him for the performance of his duties, he shall, on conviction by a competent Court, be punishable with fine which may extend to fifty rupees.

*Penalty.*

*Air Raid Precautions Services—concl'd. War Injuries.*

Rule-making  
power.

10. (1) The Central Government may make rules consistent with this Ordinance—

- (a) prescribing the duties of members of Air Raid Precautions Services, and regulating the manner in which they may be called out for service ;
- (b) regulating the organization, appointment, conditions of service, discipline, accoutrements and clothing of members of any or all Air Raid Precautions Services ;
- (c) prescribing the form of certificates of membership of any or all Air Raid Precautions Services ;
- (d) generally for giving effect to the provisions of this Ordinance.

(2) The Central Government may delegate to a Provincial Government its power to make rules under this section.

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ORDINANCE No. VII OF 1941.

THE WAR INJURIES ORDINANCE, 1941.

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AN

ORDINANCE

*to make provision for the grant of relief in respect of certain personal injuries sustained during the continuance of the present hostilities.*

[Published in the Gazette of India Extraordinary of the 25th July, 1941.]

WHEREAS an emergency has arisen which renders it necessary to make provision for the grant of relief in respect of certain personal injuries sustained during the continuance of the present hostilities ;

NOW, THEREFORE, in exercise of the powers conferred by section 72 of the Government of India Act, as set out in the Ninth Schedule to the Government of India Act, 1935, the <sup>28 Geo. 5,</sup> <sub>c. 2.</sub> Governor General is pleased to make and promulgate the following Ordinance :—

1. (1) This Ordinance may be called the War Injuries Ordinance, 1941.

Short title,  
extent and  
commence-  
ment.

*War Injuries—contd.*

(2) It extends to the whole of British India.

(3) It shall come into force at once.

2. In this Ordinance, unless there is anything repugnant <sup>Interpretation.</sup> in the subject or context,—

(1) “civil defence organisation” means any organisation established for civil defence purposes which is declared by a scheme to be a civil defence organisation for the purposes of this Ordinance and the scheme;

(2) “civil defence volunteer”, in relation to an injury, means a person certified, by an officer of a civil defence organisation authorised by the Central Government to grant such certificates, to have been a member of that organisation at the time the injury was sustained;

(3) “continuance of the present hostilities” means the period beginning with the commencement of this Ordinance and ending with such date as the Central Government may, by notification in the official Gazette, declare to be the date on which the present hostilities terminated;

(4) “gainfully occupied person” means a person who is engaged in any trade, business, profession, office, employment or vocation and is wholly or substantially dependent thereon for a livelihood, or a person who, though temporarily unemployed, is normally so engaged and dependent;

(5) “scheme” means a scheme made under this Ordinance;

(6) “war injury” means a physical injury—

(a) caused by—

(i) the discharge of any missile (including liquids and gas), or

(ii) the use of any weapon, explosive or other noxious thing, or

(iii) the doing of any other injurious act,

either by the enemy or in combating the enemy or in repelling an imagined attack by the enemy; or

(b) caused by the impact on any person or property of any enemy aircraft, or any aircraft belonging to or held by any person on behalf of or

*War Injuries—contd.*

for the benefit of His Majesty or any allied power, or any part of, or anything dropped from, any such aircraft ;

- (7) "war service injury", in relation to a civil defence volunteer, means any physical injury shown to the satisfaction of the Central Government or other authority authorised to make payments under a scheme to have arisen out of and in the course of the performance by the volunteer of his duties as a member of the civil defence organisation to which he belonged at the time the injury was sustained, and (except in the case of a war injury) not to have arisen out of and in the course of his employment in any other capacity :

Provided that before being so satisfied the Central Government or other authority authorised to make payments under a scheme shall have received from the civil defence organisation of which the volunteer concerned was a member at the time the injury was sustained, a report, by an officer of the organisation authorised by the Central Government to make such reports, about the injury in question.

Power to make schemes for relief in respect of war injuries and war service injuries.

3. (1) The Central Government may make a scheme or schemes in accordance with the provisions of this Ordinance providing for the grant of relief in respect of the following injuries sustained during the continuance of the present hostilities, namely :—

- (a) war injuries sustained by gainfully occupied persons (with such exceptions, if any, as may be specified in the scheme) and by persons of such other classes as may be so specified ; and
- (b) war service injuries sustained by civil defence volunteers.

(2) A scheme may authorise the Central Government, or any authority authorised by the Central Government to make payments under the scheme, in such circumstances and subject to such conditions as may be specified in the scheme, to make to or in respect of persons injured—

- (a) payments by way of temporary allowance, which shall be payable only so long as the person injured is incapacitated for work by the injury and has not received any such payment as is mentioned in clause (b) ;

*War Injuries—contd.*

(b) payments otherwise than by way of temporary allowance, which shall be payable only where the injury causes serious and prolonged disablement or death; and

(c) payments for the purchase of or the grant at the cost of Government of artificial limbs or surgical or other appliances <sup>1</sup>[and payments for medical and surgical treatment].

(3) A scheme may empower the Central Government to make regulations for giving effect to the purposes of the scheme.

(4) A scheme may provide that it shall come into operation or shall be deemed to have come into operation on such date as may be specified therein.

(5) A scheme may be amended or rescinded at any time by the Central Government.

(6) Any decision of the Central Government or other authority empowered to make payments under a scheme as to the making, refusal or amount, or as to the continuance or discontinuance, of a payment under a scheme may be varied from time to time by a subsequent decision of the Central Government or such authority as the case may be, but save in so far as it is so varied shall be final and conclusive.

4. (1) In respect of a war injury sustained during the continuance of the present hostilities by any person, and in respect of a war service injury sustained during that period by a civil defence volunteer, no such compensation or damages shall be payable, whether to the person injured or to any other person, as apart from the provisions of this sub-section—

Relief from liability to pay compensation or damages.

(a) would be payable under the Workmen's Compensation Act, 1923; or

(b) would, whether by virtue of any enactment or by virtue of any contract or at Common law, be payable—

(i) in the case of a war injury, by any person, or

(ii) in the case of a war service injury sustained by a civil defence volunteer, by the employer of the volunteer, or by any person who has responsibility in connection with the volunteer's duties as such or by any other civil defence volunteer,

VIII of 1923.

<sup>1</sup> Added, War Injuries (Amendment) Ordinance, 1942 (1 of 1942).

*War Injuries—contd.*

on the ground that the injury in question was attributable to some negligence, nuisance or breach of duty for which the person by whom the compensation or damages would be payable is responsible.

(2) The failure to give a notice or make a claim or commence proceedings within the time required by any enactment shall not be a bar to the maintenance of proceedings in respect of any personal injury, if—

- (a) an application for a payment under a scheme has been duly made to the Central Government or other authority empowered to make payments under the scheme in respect of the injury; and
- (b) the Court or other authority before which the proceedings are brought is satisfied that the said application was made in the reasonable belief that the injury was such that a payment could be made under the scheme; and
- (c) the Central Government or other authority empowered to make payments under the scheme certifies that the application was rejected, or that payments made in pursuance of the application were discontinued, on the ground that the injury was not such an injury; and
- (d) the proceedings are commenced within one month from the date of the said certificate.

Information  
as to earn-  
ings.

5. (1) Where it is necessary in order to determine the amount of any payment to be awarded under a scheme in respect of any injury, to ascertain the earnings of the person injured in respect of any period before he sustained the injury, the Central Government or other authority authorised to make payments under the scheme may by notice in writing require—

- (a) any person who was an employer of the injured person during that period, or
- (b) any other person having any knowledge with respect to the financial circumstances of the injured person during that period,

to furnish in accordance with the notice any information in his possession relating to those earnings or circumstances, and to produce to any person specified in the notice any wage books, records or other documents in his possession containing entries with respect to those earnings.

(2) If any person—

- (a) fails to comply with the requirements of any such notice, or

*War Injuries—concl'd. Active Service.*

- (b) in purported compliance with any such notice, knowingly or recklessly makes any untrue statement or untrue representation, or produces any document which is false in a material particular or calculated to deceive,

he shall be punishable with fine which may extend to three hundred rupees.

<sup>1</sup>[5A. (1) The person managing any dispensary or hospital shall, if so required by the Central or a Provincial Government by general or special order,— Medical attention in dispensaries and hospitals.

- (a) provide at the dispensary or hospital medical and surgical treatment for persons who have sustained injuries of the nature specified in sub-section (1) of section 3, and

- (b) keep such records and make such returns relating to the persons treated for such injuries as may be required by or under a scheme.

(2) If any person fails to comply when so required with the provisions of this section he shall be punishable with fine which may extend to one thousand rupees.]

6. Any person who, for the purpose of obtaining a payment or grant under a scheme either for himself or for any other person, knowingly makes any untrue statement or untrue representation, shall be punishable with imprisonment for a term which may extend to three months. Penalty for false statement.

7. Any assignment of, or charge on, and any agreement to assign or charge any payment awarded or to be awarded under a scheme shall be void, and, on the insolvency of any person to whom such a payment has been awarded, the payment shall not pass to any trustee or other person acting on behalf of the creditors. Assignments or charges to be void.

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ORDINANCE No. X of 1941.

THE ACTIVE SERVICE ORDINANCE, 1941.

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AN  
ORDINANCE

*to declare that certain persons shall be deemed to be on active service for the purposes of the Army Act, the Air Force Act, the Indian Army Act, 1911, and the Indian Air Force Act, 1932.*

*(Published in the Gazette of India Extraordinary of the 6th December, 1941.)*

WHEREAS an emergency has arisen which makes it necessary to declare that certain persons shall be deemed

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<sup>1</sup> *Ina., War Injuries (Amendment) Ordinance, 1942 (1 of 1942).*



*Active Service—contd.*

to be on active service for the purposes of the Army Act, the Air Force Act, the Indian Army Act, 1911, and the Indian Air Force Act, 1932 ;

NOW, THEREFORE, in exercise of the powers conferred by section 72 of the Government of India Act, as set out in the Ninth Schedule to the Government of India Act, 1935, the Governor General is pleased to make and promulgate the following Ordinance :—

1. (1) This Ordinance may be called the Active Service Ordinance, 1941.

(2) It extends to the whole of British India and applies also to British subjects and servants of the Crown in any part of India and to all members of and persons attached to, employed with or following, any military or air force raised in British India, wherever they may be.

(3) It shall come into force at once.

2. Notwithstanding anything contained in sub-section (1) of section 189 of the Army Act, sub-section (1) of section 189 of the Air Force Act, clause (13) of section 7 of the Indian Army Act, 1911, or clause (11) of section 6 of the Indian Air Force Act, 1932, all persons forming part of and all persons who are employed by, or are in the service of, or are followers of, or accompany any portion of, His Majesty's Forces shall, until such date as the Central Government may, by notification in the official Gazette, declare to be the date on which the present hostilities terminated, be deemed for the purposes of each of the said Acts to be on active service.

3. No punishment inflicted, and no order passed or other action taken in any proceedings held, under any of the Acts specified in section 2 shall, after the commencement of this Ordinance, be called in question in any Court on the ground only that the person on whom the punishment was inflicted or to whose prejudice the order was passed or the action was taken was not on active service, if—

(a) the act for which the punishment was inflicted, or in respect of which the proceedings were commenced, occurred on or after the 3rd day of September, 1939, and

(b) such person, at the time the act was committed, formed part of or was employed by, or was in the service of, or was a follower of, or accompanied any portion of, His Majesty's Forces.

Short title,  
extent and  
commence-  
ment.

Certain persons  
to be deemed  
to be on active  
service for the  
purposes of the  
Army and Air  
Force Acts.

44 and 45  
Vic., c. 58.

VIII of 1911.  
XIV of 1932.

Saving as to  
past  
proceedings.

## ORDINANCE No. XI of 1941.

## THE ESSENTIAL SERVICES (MAINTENANCE) ORDINANCE, 1941.

AN  
ORDINANCE

*to make provision for the maintenance of certain essential services.*

*(Published in the Gazette of India Extraordinary of the 20th December, 1941.)*

WHEREAS an emergency has arisen which renders it necessary to make provision for the maintenance of certain essential services ;

NOW, THEREFORE, in exercise of the powers conferred by section 72 of the Government of India Act as set out in the Ninth Schedule to the Government of India Act, 1935, the Governor General is pleased to make and promulgate the following Ordinance :—

1. (1) This Ordinance may be called the Essential Services (Maintenance) Ordinance, 1941.

*Short title, extent and commencement.*

(2) It extends to the whole of British India.

(3) It shall come into force at once.

2. In this Ordinance, unless there is anything repugnant in the subject or context, "employment" includes employment of any nature and whether paid or unpaid.

*Interpretation.*

3. This Ordinance shall apply to all employment under the Crown and to any employment or class of employment which the Central Government or a Provincial Government, being of opinion that such employment or class of employment is essential for securing the defence of British India, the public safety, the maintenance of public order or the efficient prosecution of war, or for maintaining supplies or services necessary to the life of the community, may, by notification in the official Gazette, declare to be an employment or class of employment to which this Ordinance applies.

*Employment to which this Ordinance applies.*

4. (1) <sup>2</sup>[In respect of any employment under the Crown, the Government under which the person or persons concerned are employed or an officer authorised in this behalf by that Government and] in respect of any employment or class of employment declared under section 3 to be an employment or class of employment to which this Ordinance applies, the Government making the declaration, or an officer

*Power to order persons engaged in certain essential services to furnish information.*

<sup>1</sup> For application of the Ordinance to different areas, see Vol. III, pp. 235, 236, 280 and 281.

<sup>2</sup> Ins., Essential Services (Maintenance) Amendment Ordinance, 1942 (26 of 1942).

*Essential Services (Maintenance)*—contd.

authorised in this behalf by that Government, may, by general or special order, direct that any person or persons engaged in such employment shall not depart out of such area or areas as may be specified in such order.

(2) An order made under sub-section (1) shall be published in such manner as the Government or officer making the order considers best calculated to bring it to the notice of the persons affected by the order.

**Offences.**

5. Any person engaged in any employment or class of employment to which this Ordinance applies who —

- (a) disobeys any lawful order given to him in the course of such employment, or
- (b) without reasonable excuse abandons such employment or absents himself from work, or
- (c) departs from any area specified in an order under sub-section (1) of section 4 without the consent of the authority making that order,

and any employer of a person engaged in an employment or class of employment declared under section 3 to be an employment or class of employment to which this Ordinance applies, who without reasonable cause—

- (i) discontinues the employment of such person, or
- (ii) by closing an establishment in which such person is engaged, causes the discontinuance of his employment,

is guilty of an offence under this Ordinance.

<sup>1</sup>[*Explanation 1.*—The fact that a person apprehends that by continuing in his employment he will be exposed to increased physical danger is not a reasonable excuse within the meaning of clause (b).]

*Explanation 2.*—A person abandons his employment within the meaning of clause (b) who, notwithstanding that it is an express or implied term of his contract of employment that he may terminate his employment on giving notice to his employer of his intention to do so, so terminates his employment without the previous consent of his employer.]

**Regulation of wages and conditions of service.**

6. (1) The Central Government or<sup>2</sup> \* \* \* \*  
a Provincial Government may make rules regulating or empowering a specified authority to regulate the wages and other conditions of service of persons or of any class of persons engaged in any employment or class of employment declared

<sup>1</sup> Ins., Essential Services (Maintenance) Amendment Ordinance, 1942 (26 of 1942).

<sup>2</sup> Words omitted, *ibid.*

*Essential Services (Maintenance)—concl'd. Special Criminal Courts.*

under section 3 to be an employment or class of employment to which this Ordinance applies.

(2) When any such rules have been made or when any directions regulating wages or conditions of service have been given by an authority empowered by such rules to give them, any person failing to comply therewith is guilty of an offence under this Ordinance.

7. (1) Any person found guilty of an offence under this Ordinance shall be punishable with imprisonment for a term which may extend to one year and shall also be liable to fine. *Punishes and procedure.*

(2) Where the person accused of an offence under this Ordinance is a company or other body corporate, every director, manager, secretary or other officer thereof shall, unless he proves that the offence was committed without his knowledge or that he exercised due diligence to prevent the commission of the offence, be liable to the punishment provided for the offence.

(3) No Court shall take cognizance of any offence under this Ordinance except upon complaint in writing made by a person authorised in this behalf by the Central or a Provincial Government.

1[(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, an offence under this Ordinance shall be cognizable.]

8. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Ordinance or the rules made thereunder. *Bar of legal proceedings.*

9. Any declaration, order, rule or regulation made and any direction given under this Ordinance shall have effect notwithstanding anything inconsistent therewith contained in any Act, Regulation or Ordinance. *Effect of orders, rules, etc., made under this Ordinance.*

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ORDINANCE No. II of 1942.

THE SPECIAL CRIMINAL COURTS ORDINANCE, 1942.

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AN  
ORDINANCE

*to provide for the setting up of special criminal Courts.*  
(Published in the Gazette of India Extraordinary of the 2nd January, 1942.)

WHEREAS an emergency has arisen which makes it necessary to provide for the setting up of special criminal Courts ;

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<sup>1</sup> Ins., Essential Services (Maintenance) Amendment Ordinance, 1943 (26 of 1942).

*Special Criminal Courts—contd.*

Now, THEREFORE, in exercise of the powers conferred by section 72 of the Government of India Act, as set out in the Ninth Schedule to the Government of India Act, 1935, <sup>26 Geo. 5, c. 2.</sup> the Governor General is pleased to make and promulgate the following Ordinance :—

Short title,  
extent and  
operation.

1. (1) This Ordinance may be called the Special Criminal Courts Ordinance, 1942.

(2) It extends to the whole of British India.

(3) It shall come into <sup>2</sup>force in any Province only if the Provincial Government, being satisfied of the existence of an emergency arising from a hostile attack on India or on a country neighbouring on India or from the imminence of such an attack, by notification in the official Gazette, declares it to be in force in the Province, and shall cease to be in force when such notification is rescinded :

Provided that any trial or proceeding which was pending at the time of such rescission may be continued and completed as if the provisions of this Ordinance were still in force.

Definition.

2. In this Ordinance, unless there is anything repugnant in the subject or context, "Provincial Government" means, in relation to a Chief Commissioner's Province, the Chief Commissioner.

Special  
Courts.

3. Courts of criminal jurisdiction may be constituted under this Ordinance of the following classes, namely :—

- (i) Special Judges ;
- (ii) Special Magistrates ;
- (iii) Summary Courts.

Special  
Judges.

4. The Provincial Government may appoint to be a Special Judge for such area as it may think fit any person who has acted for a period of not less than two years in the exercise of the powers of a Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure, 1898 <sup>v of 1898.</sup> (hereinafter in this Ordinance referred to as the Code).

Jurisdiction  
of Special  
Judges.

5. A Special Judge shall try such offences or classes of offences, or such cases or classes of cases as the Provincial Government, or a servant of the Crown empowered by the Provincial Government in this behalf, may, by general or special order in writing, direct.

<sup>1</sup> For application of the Ordinance to different areas, see Vol. III, pp. 237, 281 and 282.

<sup>2</sup> In Madras, see Notfn. No. 730, dated the 4th March 1942, Fort St. George Gazette, Pt. I, dated 10th March 1942.

*Special Criminal Courts—contl.*

6. (1) A Special Judge may take cognizance of offences without the accused being committed to his Court for trial, and, in trying accused persons, shall follow the procedure prescribed by the Code for the trial of warrant cases by Magistrates : Procedure of Special Judges.

Provided that a Special Judge shall ordinarily record a memorandum only of the substance of the evidence of each witness examined, may refuse to summon any witness if satisfied after examination of the accused that the evidence of such witness will not be material, and shall not be bound to adjourn any trial for any purpose unless such adjournment is, in his opinion, necessary in the interests of justice.

(2) In matters not coming within the scope of sub-section (1), the provisions of the Code, so far as they are not inconsistent with this Ordinance, shall apply to the proceedings of a Special Judge ; and for the purposes of the said provisions the Court of the Special Judge shall be deemed to be a Court of Session.

7. A Special Judge may pass any sentence authorised by law. Sentences by Special Judges.

8. If in any proceedings before a Special Judge—

- (a) a person convicted is sentenced to death, or to transportation for life, or to imprisonment for a term of seven years or more, or
- (b) though no person is so sentenced, the Special Judge certifies that in his opinion the case has involved questions of special difficulty, whether of law or fact, or is one which for any other reason ought properly to be reviewed,

Review of convictions.

the proceedings shall be submitted for review by a person nominated in this behalf by the Provincial Government, which person shall be chosen from the Judges of the High Court having jurisdiction over the area for which the Special Judge is appointed, and the decision of that person shall be final.

9. Any Presidency Magistrate or Magistrate of the first class who has exercised powers as such for a period of not less than two years may be invested by the Provincial Government with the powers of a Special Magistrate under this Ordinance. Special Magistrates.

10. A Special Magistrate shall try such offences or classes of offences, or such cases or classes of cases other than offences or cases involving offences punishable under the Indian Penal

*Special Criminal Courts—contd.*

of the Crown empowered by the Provincial Government in this behalf, may, by general or special order in writing, direct.

**Procedure of  
Special  
Magistrates.**

11. (1) In the trial of any case, a Special Magistrate shall follow the procedure laid down in sub-section (1) of section 6 for the trial of cases by a Special Judge.

(2) In matters not coming within the scope of sub-section (1), the provisions of the Code, so far as they are not inconsistent with this Ordinance, shall apply to the proceedings of a Special Magistrate; and for the purposes of the said provisions the Special Magistrate shall be deemed to be a Magistrate of the first class.

**Sentences by  
Special  
Magistrates.**

12. (1) A Special Magistrate may pass any sentence authorised by law, except a sentence of death or of transportation or imprisonment exceeding seven years.

(2) If a Special Magistrate is of opinion that an offence under trial by him requires a punishment in excess of that which he is empowered to inflict, he shall stay proceedings and send the case for trial to the Special Judge having jurisdiction in the area, and the Special Judge shall thereupon have jurisdiction to try the case as if it had been made over to him by order in writing made under section 5.

**Appeals.**

13. (1) Where a Special Magistrate passes a sentence of transportation or imprisonment for a term exceeding two years, an appeal shall lie to the Special Judge having jurisdiction in the area or, if there is no Special Judge for the area, to the High Court in a Presidency-town and elsewhere to the Court of Session.

(2) An appeal under sub-section (1) shall be presented within seven days from the date of the sentence.

(3) In disposing of an appeal under this section, a Special Judge shall follow the same procedure and have the same powers as an appellate Court follows and has under the Code.

**Distribution  
of cases.**

14. If any question arises whether, under any order made under section 5 or section 10, an offence is triable by a Special Judge or a Special Magistrate, the question shall be referred for decision to the authority which made the order and the decision of that authority shall be final.

**Summary  
Courts.**

15. The Provincial Government may, by general or special order in writing, empower any Magistrate appointed under the provisions of the Code to exercise the powers of a Summary Court in any area specified in the order.

**Jurisdiction  
of Summary  
Courts.**

16. (1) A Summary Court shall have power to try such offences or classes of offences, or such cases or classes of cases as the District Magistrate, or in a Presidency-town the Chief Presidency Magistrate, or a servant of the Crown authorised

*Special Criminal Courts—contd.*

in this behalf by the District Magistrate or Chief Presidency Magistrate, may by general or special order direct :

Provided that no person shall be tried by a Summary Court for an offence which is punishable with imprisonment for a term exceeding two years, unless it is an offence specified in sub-section (1) of section 260 of the Code.

(2) The District Magistrate or Chief Presidency Magistrate may by general or special order give directions as to the distribution among the Summary Courts within his jurisdiction of cases triable by them under sub-section (1).

17. In the trial of any case a Summary Court shall, as far as possible, follow the procedure laid down in the Code for the trial of warrant cases, and shall have all the powers conferred by the Code on a Magistrate :

*Procedure of  
Summary  
Courts.*

Provided that the Court shall not be required to record more than a memorandum of the evidence or to frame a formal charge :

Provided further that, in the trial of any offence punishable with imprisonment for a term not exceeding one year, the Court may follow the procedure for the summary trial of cases in which an appeal lies laid down in Chapter XXII of the Code.

18. Summary Courts may pass any sentence which may be passed by a Magistrate of the first class.

*Sentences by  
Summary  
Courts.*

19. (1) If a Summary Court, in a case tried according to the procedure for the trial of warrant cases, passes a sentence of imprisonment for a term exceeding three months or of fine exceeding two hundred rupees or in a case tried by summary procedure passes a sentence of imprisonment for a term exceeding one month or of fine exceeding fifty rupees, an appeal shall lie in a Presidency-town to the Chief Presidency Magistrate and elsewhere to the Special Magistrate or other Magistrate of the first class appointed by the District Magistrate of the district in which the Summary Court is situated to hear appeals from that Court.

*Appeals.*

(2) An appeal under sub-section (1) shall be presented within seven days from the date of the sentence.

(3) In disposing of an appeal under this section, the appellate Court shall follow the same procedure and have the same powers as an appellate Court follows and has under the Code.

20. (1) If a Summary Court is of opinion that the offence disclosed is one which it is not empowered to try, it shall send the case for trial to the Special Judge or Special Magistrate empowered to try the case under this Ordinance or, if no such Court has been so empowered, to an ordinary criminal Court having jurisdiction.

*Procedure  
when  
Summary  
Court  
considers  
case triable  
by another  
Court.*



*Special Criminal Courts—contd.*

(2) If a Summary Court is of opinion that an offence which it is empowered to try should be tried by a Court of superior jurisdiction, or that it requires a punishment in excess of that which the Summary Court is empowered to inflict, it shall stay proceedings and report the case to the District Magistrate or in a Presidency-town to the Chief Presidency Magistrate who may—

(a) direct that the case shall be tried by a Summary Court, or

(b) send it to a Court constituted under this Ordinance having jurisdiction, or to an ordinary criminal Court having jurisdiction, or

(c) report it for the orders of the Provincial Government.

Powers of  
Special  
Courts to  
deal with  
refractory  
accused.

21. (1) Where an accused, in a trial before a Court constituted under this Ordinance, has, by his voluntary act, rendered himself incapable of appearing before the Court, or resists his production before it, or behaves before it in a persistently disorderly manner, the Court may, at any stage of the trial, by order in writing made after such inquiry as it may think fit, dispense with the attendance of such accused for such period as it may think fit, and proceed with the trial in his absence.

(2) Where a plea is required in answer to a charge from an accused whose attendance has been dispensed with under sub-section (1), such accused shall be deemed not to plead guilty.

(3) An order under sub-section (1) dispensing with the attendance of an accused shall not affect his right of being represented by a pleader at any stage of the trial, or being present in person if he has become capable of appearing, or appears in Court and undertakes to behave in an orderly manner.

(4) Notwithstanding anything contained in the Code, no finding, sentence or order passed in a trial before a Court constituted under this Ordinance shall be held to be illegal by reason of any omission or irregularity whatsoever arising from the absence of any or all of the accused whose attendance has been dispensed with under sub-section (1).

22. A Court constituted under this Ordinance may, if it thinks fit, order at any stage of a trial that the public generally or any particular persons shall not have access to or be or remain in the room or building used by the Court.

Powers of  
Special  
Court to  
exclude the  
public.

*Special Criminal Courts—contd.*

1 of 1872.

23. Notwithstanding anything contained in the Indian Evidence Act, 1872, when the statement of any person has been recorded by any Magistrate, such statement may be admitted in evidence in any trial before a Court constituted under this Ordinance, if such person is dead or cannot be found or is incapable of giving evidence. Special rule of evidence.

24. (1) Notwithstanding anything contained in section 386 of the Code, where any offender has been sentenced by a Court constituted under this Ordinance to pay a fine, the Court may recover the fine by the issue of a warrant for the levy of the amount by attachment and sale of any property, movable or immovable, of the offender. Special rule of procedure.

(2) Notwithstanding anything contained in section 545 of the Code, a Court constituted under this Ordinance may, when imposing a fine on any person convicted by the Court, order the whole or any part of the fine recovered to be applied—

- (a) in the payment to any person affected by the offence of compensation for any loss, injury or annoyance caused by the offence, or
- (b) in the payment of a reward to any person who has given information leading to the detection of the offence or to the conviction of the accused.

1[24A. Notwithstanding anything contained in the Code no person accused in a trial before a Court constituted under this Ordinance of a non-bailable offence shall be released on bail or on his own bond unless— Special provisions regarding bail.

- (a) the prosecution has been given an opportunity to oppose the application for such release, and
- (b) the Court is satisfied that there are reasonable grounds for believing that he is not guilty of the offence,

and no person who has been sentenced by a Court constituted under this Ordinance to a term of imprisonment for any offence whether bailable or non-bailable shall be released on bail pending any appeal by him.]

25. A Court constituted under this Ordinance shall not be required to grant an adjournment for the purpose of securing the attendance of a legal practitioner, if in the opinion of the Court such adjournment would cause unreasonable delay in the disposal of the case. Legal practitioners.

<sup>1</sup> Ins., Special Criminal Courts (Amendment) Ordinance, 1942 (24 of 1942).

*Special Criminal Courts—concl'd. Penalties (Enhancement).*

Exclusion of  
interference of  
other  
Courts.

26. Notwithstanding the provisions of the Code, or of any other law for the time being in force, or of anything having the force of law by whatsoever authority made or done, there shall, save as provided in this Ordinance, be no appeal from any order or sentence of a Court constituted under this Ordinance and, save as aforesaid, no Court shall have authority to revise such order or sentence, or to transfer any case from any such Court, or to make any order under section 491 of the Code or have any jurisdiction of any kind in respect of any proceedings of any such Court.

Application  
of ordinary  
law.

27. The provisions of the Code and of any other law for the time being in force, in so far as they may be applicable and in so far as they are not inconsistent with the provisions of this Ordinance, shall apply to all matters connected with, arising from or consequent upon a trial by special criminal Courts constituted under this Ordinance.

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ORDINANCE No. III OF 1942.

THE PENALTIES (ENHANCEMENT) ORDINANCE, 1942.

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AN  
ORDINANCE

*to enhance in certain circumstances the penalties provided by law for the punishment of certain offences.*

*(Published in the Gazette of India Extraordinary of the 2nd January, 1942.)*

WHEREAS an emergency has arisen which makes it necessary to enhance in certain circumstances the penalties provided by law for the punishment of certain offences;

NOW, THEREFORE, in exercise of the powers conferred by section 72 of the Government of India Act, as set out in the Ninth Schedule to the Government of India Act, 1935, <sup>26 Geo. 5, c. 2.</sup> the Governor General is pleased to make and promulgate the following Ordinance :—

Short title,  
extent and  
operation.

1. (1) This Ordinance may be called the Penalties (Enhancement) Ordinance, 1942.

(2) It extends to the whole of British India.

(3) It shall come into force at once; but sections 3 to 7 inclusive shall have effect only in pursuance of and in accordance with a notification issued under section 2 and only so long as such notification remains unrescinded.

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<sup>1</sup> For application of the Ordinance to different areas, see Vol. III, pp. 238, 281 and 282.

*Penalties (Enhancement)—contd.*

2. The Provincial Government may, from time to time by notification in the official Gazette, declare that sections 3 to 7 inclusive, or any of them, or such provisions of section 4 or section 7 as relate to a particular offence or particular offences therein specified shall have effect throughout the Province, or in any specified area in the Province.

Power of Provincial Government to put the provisions of this Ordinance into effect.

3. Whoever commits theft in any premises which have been damaged by war operations, or vacated by reason of attack by the enemy or in consequence of any authorised directions given for the purpose of meeting or hindering any actual or apprehended attack by the enemy or of protecting persons and property from the dangers involved in any such attack, or commits theft of any article which has been left exposed or unprotected as a consequence of war operations shall be punished with death, or with rigorous imprisonment for a term which may extend to ten years, or with whipping.

Punishment for theft.

*Explanation.*—In this section “theft” means theft as defined in section 378 of the Indian Penal Code, and “authorised directions” means any order or directions made or given in the exercise of any power conferred by or under the Defence of India Act, 1939, or made or given by any officer of His Majesty’s Forces acting in the course of his duties.

XLV of 1960.

XXXV of 1939.

4. Whoever commits an offence punishable under section 326 or section 435 or section 436 of the Indian Penal Code may, in lieu of any punishment to which he is liable under the said Code, be punished with death, or with whipping.

Punishment for offences under sections 326, 435 and 436, Indian Penal Code.

5. Whoever contravenes any of the provisions of rule 35 of the Defence of India Rules may, in lieu of any punishment to which he is liable under the said rule, be punished with death, or with whipping.

Punishment for contraventions of rule 35, Defence of India Rules.

6. Whoever commits an offence punishable under section 2[376] of the Indian Penal Code may, in lieu of any punishment to which he is liable under the said Code or under the Whipping Act, 1909, be punished with death.

Punishment for offences under section 376 of Indian Penal Code.

IV of 1909.

7. Whoever commits any offence punishable under section 2[147] or section 148 or section 186 of the Indian Penal Code may, in lieu of any punishment to which he is liable under the said Code, be punished with whipping.

Punishment for offences under sections 147, 148 and 186, Indian Penal Code.

<sup>1</sup> Sections 3 to 7 declared in operation in Madras from 12th March 1942. See Notfn. No. 756, dated the 6th March 1942, Fort St. George Gazette, Pt. I, dated the 10th March 1942.

<sup>2</sup> Subs., Penalties (Enhancement) Amendment Ordinance, 1942 (7 of 1942).

*Penalties (Enhancement)*—concl'd. *Motor Vehicles (Drivers)*.

Saving.

8. Notwithstanding anything elsewhere contained in any Act, Regulation or Ordinance, an offence made punishable with death by this Ordinance shall not, by reason of having been made so punishable, cease to be triable by any Court which might have tried the offence had it not been made so punishable.

## ORDINANCE No. V of 1942.

### THE MOTOR VEHICLES (DRIVERS) ORDINANCE, 1942.

AN

### ORDINANCE

*to provide for the requisitioning on behalf of Government of the services of persons capable of driving motor vehicles.*

*(Published in the Gazette of India Extraordinary of the 27th January, 1942.)*

WHEREAS an emergency has arisen which makes it necessary to take powers to require persons capable of driving motor vehicles to place themselves and their services at the disposal of Government ;

Now, THEREFORE, in exercise of the powers conferred by section 72 of the Government of India Act, as set out in the Ninth Schedule to the Government of India Act, 1935, <sup>26 Geo. 5,</sup> the Governor General is pleased to make and promulgate the following Ordinance :—

Short title,  
extent and  
commence-  
ment.

1. (1) This Ordinance may be called the Motor Vehicles (Drivers) Ordinance, 1942.

(2) It extends to the whole of British India.

(3) It shall come into force at once.

Definitions.

2. In this Ordinance, unless there is anything repugnant in the subject or context,—

(a) "licensing authority" means a licensing authority appointed for the purposes of the Motor Vehicles Act, 1939 ;

IV of 1939.

(b) "motor vehicle" means any mechanically propelled vehicle adapted for use upon roads ;

(c) "Provincial Government" means, in relation to a Chief Commissioner's Province, the Chief Commissioner ;

<sup>1</sup> For application of the Ordinance to different areas, see Vol. III, pp. 239 and 240.

*Motor Vehicles (Drivers)—contd.*

- (d) "transport vehicle" has the meaning assigned to that expression in the Motor Vehicles Act, 1939.

IV of 1939

3. (1) The Provincial Government may cause any licensing authority to prepare for the Province or for any area in the Province a register in which shall be entered the names of such persons within the Province or area, as the case may be, who are capable of driving a motor vehicle as the licensing authority may think fit to enter, together with such details of their qualifications as drivers as may be prescribed by rules made under section 8.

Register of motor vehicle drivers.

(2) The register shall show under separate headings those persons who are capable of driving a transport vehicle, and those persons who are not so capable.

(3) The licensing authority shall, on entering the name of any person in the register, send to that person a notice in writing informing him that his name has been entered in the register for the Province or area, as the case may be, stating whether he has been registered as capable of driving a transport vehicle or not, and informing him of the provisions of section 4 and section 5 of this Ordinance.

(4) The licensing authority may, for the purpose of preparing the register under sub-section (1), by notice in writing, call upon any person to furnish in accordance with the requirements of the notice any information relating to his qualifications as a driver of motor vehicles which may be required by such notice.

4. (1) Any officer empowered in this behalf by the Provincial Government may, by order in writing delivered to any person whose name is enrolled in the register referred to in section 3, require him to present himself at such time and at such place and to such authority within the Province as may be specified in the order and to perform within the Province such services and for such time as may be so specified or as may be required of him by the authority to whom he has presented himself in pursuance of such order.

Power to requisition services.

(2) An order under sub-section (1) may require a person to drive a motor vehicle notwithstanding that he is not licensed under the Motor Vehicles Act, 1939, to drive a motor vehicle or a motor vehicle of the class to which the vehicle to be driven belongs, and nothing in section 3 of the Motor Vehicles Act, 1939, shall apply to such person in respect of any motor vehicle driven by him in obedience to any such order.

IV of 1939.

IV of 1939.

*Motor Vehicles (Drivers)—contd.*

Registered persons to notify changes of address, and of their permission to leave area of registration.

5. Any person to whom the notice under sub-section (3) of section 3 is sent shall thereafter, on any change occurring in his address, at once report such change to the licensing authority, and shall not depart out of the Province or area, as the case may be, in which he is registered without first informing the licensing authority and receiving permission from that authority to depart.

## Penalties.

6. (1) Whoever fails to comply with the requirements of any notice issued under sub-section (4) of section 3 or in purported compliance with any such notice knowingly or recklessly makes any untrue statement, or without reasonable excuse fails to report as required by section 5 any change occurring in his address shall be punishable with fine which may extend to one hundred rupees.

(2) Whoever without reasonable excuse fails to comply with an order in writing made under sub-section (1) of section 4 or to perform in the manner required any service which he is required to perform in pursuance of such order or, in contravention of section 5, departs out of the area in which he is registered shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

(3) Whoever being the employer of a person required by an order under sub-section (1) of section 4 to present himself for service does anything calculated to prevent such person from or to obstruct such person in complying with the order shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

## Sanction for prosecutions.

7. No prosecution for an offence punishable under this Ordinance and no prosecution for an offence punishable under the Motor Vehicles Act, 1939, committed by a person <sup>IV of 1939.</sup> who is for the time being acting in obedience to an order under sub-section (1) of section 4 of this Ordinance, shall be instituted without the previous sanction in writing of the Provincial Government or of an authority authorised in this behalf by the Provincial Government.

## Power to make rules.

8. (1) The Provincial Government may, by notification in the official Gazette, make rules to carry out the purposes of this Ordinance.

(2) Without prejudice to the generality of the foregoing power, rules may be made providing for all or any of the following matters, namely :—

(a) the form of the register referred to in section 3, the principles to be followed in selecting names

*Motor Vehicles (Drivers)—concl'd. Civil Pioneer Force.*

for entry therein, and the details to be recorded therein ;

- (b) the form of any order in writing or notice in writing to be issued under this Ordinance ;
- (c) the payment of persons whose services are requisitioned under this Ordinance for the services rendered.

## ORDINANCE NO. X OF 1942.

## THE CIVIL PIONEER FORCE ORDINANCE, 1942.

AN

## ORDINANCE

*to constitute a Civil Pioneer Force for service in British India and to provide for the organization, control and discipline thereof.*

*(Published in the Gazette of India Extraordinary of the 7th March, 1942.)*

WHEREAS an emergency has arisen which makes it necessary to constitute a Civil Pioneer Force for service in British India and to provide for the organization, control and discipline thereof ;

NOW, THEREFORE, in exercise of the powers conferred by section 72 of the Government of India Act, as set out in the Ninth Schedule to the Government of India Act, 1935, the Governor General is pleased to make and promulgate the following Ordinance :—

1. (1) This Ordinance may be called the Civil Pioneer Force Ordinance, 1942.

Short title,  
extent and  
commence-  
ment.

(2) It extends to the whole of British India.

(3) It shall come into force at once.

2. In this Ordinance, unless there is anything repugnant in the subject or context,—

Definitions.

(a) “prescribed” means prescribed by rules made under this Ordinance ;

(b) “service in a war area” means service in an area in which for the time being enemy action is taking place, or in an area declared by the Central Government to be a war area for the purposes of this Ordinance ;

<sup>1</sup> For application of the Ordinance to different areas, see Vol. III, pp. 240 and 241.



*Civil Pioneer Force*—contd.

- (c) “superior officer” means, in relation to any enrolled person not himself an officer, any officer mentioned in sub-section (1) of section 5 and, in relation to an enrolled person who is himself an officer, an officer of a class mentioned in sub-section (1) of section 5 before the class to which he himself belongs, or an officer of the same class as but of a grade higher than himself.

Constitution  
of the Civil  
Pioneer Force.

3. (1) There shall be raised and maintained in the manner hereinafter provided a force to be designated the Civil Pioneer Force to perform in British India the duties hereinafter specified.

(2) The Central Government may constitute for any Province one or more Provincial units of the Civil Pioneer Force, and may disband or reconstitute any unit so constituted.

Duties of  
Civil Pioneer  
Force.

4. (1) It shall be the duty of the Civil Pioneer Force and of the persons enrolled therein, as and when required by the Central or a Provincial Government or by an authority authorised in this behalf by the Central or a Provincial Government, for the purpose of securing the defence of British India, the public safety, the maintenance of public order or the efficient prosecution of war, or for maintaining supplies and services essential to the life of the community,—

- (a) to carry out the construction or demolition of buildings, the clearing of debris, the salvage of property and the rescue of human beings ;
- (b) to carry out constructional work on roads, buildings, docks and aerodromes ;
- (c) to load or unload transport vehicles and vessels ;
- (d) to perform work in factories, workshops and ship-yards ;
- (e) to render such other services as, in the opinion of the Central or a Provincial Government, are necessary or expedient for the purpose aforesaid :

Provided that the Central Government may, subject to such conditions as may be prescribed, levy a charge for any work carried out by the Civil Pioneer Force for or on behalf of a Provincial Government, local authority or industrial or commercial undertaking.

(2) A unit of the Civil Pioneer Force shall be liable to service in any part of the Province for which it has been

*Civil Pioneer Force—contd.*

constituted under section 3, and shall be liable, if the Central Government so orders, to service outside that Province in any part of British India.

5. (1) There shall be the following classes of officers in the Civil Pioneer Force, namely :— Officers of Civil Pioneer Force.

(i) commissioned officers—

(a) Commandants,

(b) Captains,

(c) Lieutenants,

(d) Second Lieutenants ;

(ii) administrative officers ;

(iii) non-commissioned officers—

(a) Havildars,

(b) Naiks,

and such grades in either class of non-commissioned officers as the Central Government may direct.

(2) Commissioned and administrative officers shall be deemed to be enrolled in the Civil Pioneer Force for so long as they remain officers in that Force.

(3) The Provincial Government may authorise any commissioned officer to exercise the powers vested by this Ordinance in a commandant.

6. (1) Commissioned officers shall be chosen by the Central Government or by the Provincial Government subject to approval by the Central Government, and the Central Government shall issue to each such officer a commission of appointment. Appointment of officers.

(2) Administrative officers shall be appointed by the Provincial Government by notification in the official Gazette.

(3) Non-commissioned officers shall be appointed from persons enrolled in the unit by the commandant of the unit or by such other authority and in such manner as may be prescribed.

7. (1) Any British subject or any subject of an Indian State may, if he has attained the age of eighteen and is not a member of His Majesty's Naval, Military or Air Forces, offer himself for enrolment in the Civil Pioneer Force, and, if he satisfies the prescribed conditions, may be enrolled therein in the prescribed manner for such period as may be prescribed, and shall thereupon become subject to the provisions of this Ordinance. Enrolment and appointment to units.

*Civil Pioneer Force—contd.*

(2) Subject to the prescribed conditions, an applicant for enrolment may apply to be enrolled for service in a particular unit.

(3) Any person enrolled shall without unnecessary delay be appointed in the prescribed manner to a unit constituted under section 3 for the Province in which he for the time being resides, or if he applies for enrolment in a particular unit to that unit, or if he is a subject of an Indian State to the unit or a unit to which subjects of that State are by the orders of the Central Government to be appointed.

**Transfers.**

8. Any person appointed to a unit under section 7 may be transferred whether on disbandment of the unit or otherwise to another unit in such manner as may be prescribed :

Provided that a person who has applied for enrolment in a particular unit and has been appointed to that unit shall not be transferred to another unit without his own consent.

**Liability to service.**

9. Every person enrolled shall be bound to serve in the unit of the Civil Pioneer Force to which he has been appointed or transferred or is for the time being attached until he is discharged from the Civil Pioneer Force.

**Discharge and dismissal.**

10. (1) Every person enrolled shall be entitled to receive his discharge from the Civil Pioneer Force on the expiration of the period for which he was enrolled or on his attaining the age of fifty ; but any such person may before he becomes so entitled be discharged by such authority and subject to such conditions as may be prescribed.

(2) The prescribed authority may, subject to such conditions as may be prescribed, dismiss any enrolled person from the Civil Pioneer Force.

**Major offences.**

11. Any person enrolled who—

(a) begins, excites, abets or conspires with any other person to raise, or join in any mutiny, or

(b) being present at any mutiny, does not use his utmost endeavour to suppress it, or

(c) knowing or having reason to believe in the existence of any mutiny or of any intention to mutiny, does not without delay give information thereof to his commandant or other superior officer, or

(d) uses criminal force to, or commits an assault on, his superior officer, whether on or off duty, knowing or having reason to believe him to be such, or

*Civil Pioneer Force—contd.*

(e) while on service in a war area,—

- (i) disobeys the lawful command of his superior officer, or
- (ii) deserts or attempts to desert the service or his party, or his post or his duty, or
- (iii) leaves his post or party or his duty to go in search of plunder, or
- (iv) intentionally causes or spreads a false alarm,

shall be punishable with imprisonment for a term which may extend to fourteen years, or with fine which may extend to five hundred rupees, or with both such imprisonment and fine.

12. Any person enrolled who—

*Minor offences.*

- (a) is in a state of intoxication when on or detailed for duty, or
- (b) leaves his post or duty without being regularly relieved or without permission, or, being under arrest or in confinement, leaves his arrest or confinement before he is set at liberty by proper authority, or
- (c) is grossly insubordinate or insolent to his superior officer in the execution of his office, or
- (d) refuses or wilfully neglects to perform or assist in any work or duty ordered to be done either in quarters or elsewhere, or
- (e) while in charge of a party, permits behaviour prejudicial to good order and discipline, or
- (f) uses criminal force to, or commits an assault on, or otherwise ill uses, any member of the Civil Pioneer Force subordinate to him in rank or position, or
- (g) plunders, destroys or damages property of any kind, or
- (h) designedly or through neglect injures or loses, or fraudulently or without due authority disposes of, his clothes, tools or equipment or any such articles entrusted to him or belonging to any other enrolled person, or
- (i) malingers, feigns or produces disease or infirmity in himself, or intentionally delays his cure or aggravates his disease or infirmity, or
- (j) with intent to render himself or any other person unfit for service, voluntarily causes hurt to himself or that other person, or

*Civil Pioneer Force—contd.*

(k) while not on service in a war area,—

(i) disobeys the lawful command of his superior officer, or

(ii) deserts or attempts to desert the service or his party or his post or his duty, or

(l) is guilty of any act or omission not otherwise punishable which is prejudicial to good order and discipline,

shall, unless the offence is dealt with under section 14, 15 or 16, be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to two hundred rupees, or with both.

Attempts to commit offences and abetments of offences.

13. Any enrolled person who attempts to commit or abets the commission of an offence made punishable by this Ordinance shall be punishable with the punishment provided for such offence.

Non-judicial disposal of minor offences of enrolled persons other than officers.

14. When an enrolled person other than a commissioned, administrative or non-commissioned officer is charged with an offence punishable under section 12, the officer commanding the detachment in which such person is serving, if so authorised in writing by the commandant, or the commandant himself, may direct that the charge shall be dealt with without formal trial, and thereupon the officer commanding the detachment may award to such person any one or more of the following punishments, namely :—

(a) confinement in such place as may be considered suitable for a period not exceeding seven days ;

(b) punishment drill, extra work, fatigue or other duty, not exceeding thirty days in duration, with or without confinement to quarters ;

(c) forfeiture of pay and allowances for a period not exceeding one month.

Non-judicial disposal of minor offences of non-commissioned officers.

15. When a non-commissioned officer is charged with an offence punishable under section 12, the officer commanding the detachment in which the non-commissioned officer is serving, if so authorised in writing by the commandant, or the commandant himself, may, without formal trial, award to such non-commissioned officer any one or more of the following punishments, namely :—

(a) reduction to a lower grade or a lower class or to the ranks ;

(b) forfeiture of pay and allowances for a period not exceeding one month ;

*Civil Pioneer Force—contd.*

- (c) punishment drill, extra work or other duty not exceeding thirty days in duration;
- (d) reprimand or severe reprimand.

16. When a commissioned or an administrative officer is charged with an offence punishable under section 12, the commandant may, without formal trial, reprimand or severely reprimand such officer or may refer the matter to the Provincial Government for orders. Non-trial trial of minor offences of summary, disciplinary and administrative officers.

17. (1) An offence punishable under section 12 may, if the charge is not disposed of under section 14, 15 or 16, be tried by a summary Court constituted as provided in sub-section (2). Trial of minor offences.

(2) A summary Court shall consist of a Magistrate of the first class appointed by the District Magistrate or in a Presidency town by the Chief Presidency Magistrate, sitting with the commandant or a commissioned officer of the Civil Pioneer Force nominated by him and a third person to be selected by the Provincial Government in the prescribed manner. The Magistrate so appointed shall be president of the Court and, in the event of any difference of opinion, the opinion of the majority shall prevail.

(3) A summary Court may take cognizance of an offence upon a report in writing made by a commissioned officer of the Civil Pioneer Force, and such officer shall in making such complaint be deemed to be a public servant acting in the discharge of his official duties.

(4) A summary Court shall in the trial of an offence follow as far as possible the procedure for the trial of summary cases in which an appeal lies laid down in Chapter XXII of the Code of Criminal Procedure, 1898.

(5) A summary Court may pass any sentence authorised by section 12 for the offence.

(6) An appeal from a sentence passed by a summary Court may be made at any time within thirty days of the sentence to the prescribed authority and such authority shall in disposing of such appeal follow the same procedure and have the same powers as an appellate Court follows and has under the Code of Civil Procedure, 1908.

(7) The provisions of the Code of Criminal Procedure, 1898, and of any other law for the time being in force, in so far as they may be applicable and in so far as they are not inconsistent with the provisions of this Ordinance, shall apply to all matters connected with, arising from or consequent upon a trial by a summary Court.

V of 1898.

V of 1903.

V of 1898.

*Civil Pioneer Force—contd.*

Power of  
commandant  
to make deduc-  
tions from pay.

18. The following deductions may, subject to the prescribed conditions, be made by the commandant from the pay and allowances of any enrolled person, namely :—

- (a) all pay and allowances for every day on which the enrolled person is absent either on desertion or without leave or because of imprisonment awarded by a Court ;
- (b) all pay and allowances for every day on which the enrolled person is in custody on a charge for an offence of which he is afterwards convicted by a Court, or on a charge of absence without leave for which he is afterwards awarded punishment under section 14, 15 or 16 ;
- (c) all pay and allowances for every day on which the enrolled person is in hospital on account of sickness certified by the medical officer attending him to have been caused by an offence punishable under this Ordinance committed by him ;
- (d) any sum required to defray any expenditure incurred as a consequence of misconduct by him or to make good any loss of, or damage or destruction done by him to, any clothes, tools or equipment or to any buildings or property :

Provided that the total deductions from the pay and allowances of any enrolled person shall not exceed in any one month one-half of his pay and allowances for that month.

Power of  
Provincia  
Government  
to award  
punishments.

19. The following punishments may, subject to the prescribed conditions, be awarded to a commissioned or an administrative officer by the Provincial Government, namely :—

- (a) reprimand or severe reprimand ;
- (b) deductions from pay to defray expenditure or recoup loss incurred as a consequence of misconduct by him ;
- (c) forfeiture of service ;

and the Provincial Government may, subject to the prescribed conditions, reduce a commissioned officer from one class of commissioned rank to a lower class.

Custody  
during  
investigation.

20. Any enrolled person charged with an offence punishable under this Ordinance may be taken into and kept in custody in the prescribed manner by the unit to which he belongs pending investigation of the offence.

*Civil Pioneer Force—concl.*

21. (1) Whenever any enrolled person deserts his unit, the commandant or the officer commanding the detachment to which he belongs may give written information of the desertion to the officer in charge of the nearest police station, and such police officer shall thereupon take steps for the apprehension of the deserter in like manner as if he were a person for whose apprehension a warrant had been issued by a Magistrate, and shall deliver the deserter when apprehended to the custody of his unit. Arrest of deserters.

(2) Any police officer may arrest without warrant any person reasonably believed by him to be an enrolled person who has deserted his unit, and shall on making an arrest bring or send the arrested person without delay to the unit to which he belongs.

22. Any enrolled person charged with an offence punishable under this Ordinance may be tried and punished for such offence in any place in British India. Place of trial.

23. In any proceedings before a Court the fact that a person is a person enrolled under this Ordinance may be proved by the production of a certificate purporting to be signed by the commandant of the unit in which he is enrolled that he is so enrolled. Proof of enrolment.

24. The Central Government may exercise any power vested by this Ordinance in the Provincial Government. Power of Central Government to exercise powers vested in Provincial Government.

25. (1) The Central Government may make regulations providing for all details connected with the organization of the Civil Pioneer Force and the units thereof. Power to make regulations.

(2) In particular and without prejudice to the generality of the foregoing power, regulations may be made providing for the duties, training, clothing, equipment and the conditions of service of persons enrolled, and for the payment of compensation to or in respect of persons enrolled for injuries received or fatalities incurred by them.

26. (1) The Central Government may, by notification in the official Gazette, make rules to carry out the purposes of this Ordinance. Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, rules may be made under this section—

- (a) providing for any matter for which regulations under section 25 may be made or any matter ancillary to such matter;
- (b) providing for any matter which is to be or may be prescribed under this Ordinance;
- (c) providing for the medical examination of persons offering themselves for enrolment under section 7.



## ORDINANCE No. XI OF 1942.

## THE POLICE (RESIGNATION OF OFFICE) ORDINANCE, 1942.

AN

## ORDINANCE

*temporarily to suspend the right at present enjoyed by certain members of Police forces in British India to resign office on giving notice of their intention to resign.*

*(Published in the Gazette of India Extraordinary of the 7th April, 1942.)*

WHEREAS an emergency has arisen which makes it necessary temporarily to suspend the right at present enjoyed by certain members of Police forces in British India to resign office on giving notice of their intention to resign ;

NOW, THEREFORE, in exercise of the powers conferred by section 72 of the Government of India Act, as set out in the Ninth Schedule to the Government of India Act, 1935, the Governor General is pleased to make and promulgate the following Ordinance :—

1. (1) This Ordinance may be called the Police (Resignation of Office) Ordinance, 1942.

(2) It extends to the whole of British India.

(3) It shall come into force at once.

2. So long as this Ordinance remains in force the amendments specified in the third column of the Schedule shall be deemed to be made in the enactments specified in the second column thereof.

Short title,  
extent and  
commence-  
ment.

Temporary  
amendment  
of certain  
Acts relating  
to police.

## THE SCHEDULE.

(See section 2.)

Number and year of Act.	Name of Act.	Amendments deemed to be made.
Act XXIV of 1859.	The Madras District Police Act, 1859.	<p>1. In section 19, the words "or unless he shall have given to his superior officer two months' notice in writing of his intention to do so" shall be omitted.</p> <p>2. In section 44, the words "or without having given two months' notice as provided by this enactment" shall be omitted.</p>

*Police (Resignation of Office)—contd.*

Number and year of Act.	Name of Act.	Amendments deemed to be made.
Act V of 1861 .	The Police Act, 1861.	<ol style="list-style-type: none"> <li>1. In section 9, the words " unless he shall have given to his superior officer notice in writing, for a period of not less than two months, of his intention to resign " shall be omitted.</li> <li>2. In section 29, the words " or without having given previous notice for the period of two months " shall be omitted.</li> </ol>
Ben. Act II of 1866.	The Calcutta Suburban Police Act, 1866.	In section 7, the words " or unless he shall have given to the Commissioner six months' notice of his intention if a member of the mounted branch of the said force, and two months' notice if a member of any other branch " and the words " or notice " shall be omitted.
Ben. Act IV of 1866.	The Calcutta Police Act, 1866.	In section 14, the words " or unless he shall have given to the Commissioner six months' notice of his intention, if a member of the mounted branch of the said force, and two months' notice if a member of any other branch " and the words " or notice " shall be omitted.
Mad. Act III of 1888.	The Madras City Police Act, 1888.	In section 13, the words " or until after the expiry of two months from the date of his giving to the Commissioner a notice in writing of his intention to do so " shall be omitted.
Bom. Act IV of 1890.	The Bombay District Police Act, 1890.	<ol style="list-style-type: none"> <li>1. In sub-section (1) of section 34, after the words " withdraw himself from the duties thereof " the word " until " and clauses (a) and (b) shall be omitted.</li> <li>2. In sub-section (2) of section 34, for the words " as aforesaid " the words " as such police-officer, to the Crown or to any police fund " shall be substituted.</li> </ol>
Bom. Act IV of 1902.	The City of Bombay Police Act, 1902.	<ol style="list-style-type: none"> <li>1. In sub-section (1) of section 14, the words beginning with " and except in the case of a special Police officer " and ending with the end of the sub-section shall be omitted.</li> <li>2. In the proviso to sub-section (2) of section 14, for the words " any such debt as aforesaid due from such Police officer " the words " any debt due by him as a Police officer to the Crown or to any Police fund " shall be substituted.</li> </ol>

## ORDINANCE No. XII OF 1942.

## THE WAR RISKS (FACTORIES) INSURANCE ORDINANCE, 1942.

AN

## ORDINANCE

*to provide for the insurance of certain property in British India against war risks.*

*(Published in the Gazette of India Extraordinary of the 8th April, 1942.)*

WHEREAS an emergency has arisen which makes it necessary to provide for the insurance of certain property in British India against war risks ;

NOW, THEREFORE, in exercise of the powers conferred by section 72 of the Government of India Act, as set out in the Ninth Schedule to the Government of India Act, 1935, <sup>28 Geo. 5, c. 2.</sup> the Governor General is pleased to make and promulgate the following Ordinance :—

Short title,  
extent and  
commence-  
ment.

1. (1) This Ordinance may be called the War Risks (Factories) Insurance Ordinance, 1942.

(2) It extends to the whole of British India.

(3) It shall come into force at once.

Definitions.

2. In this Ordinance, unless there is anything repugnant in the subject or context,—

(a) “buildings” includes foundations, plinths, floors, staircases, tanks, engine and boiler beds, chimneys and flues ;

(b) “factory” means a factory as defined in clause (j) of section 2 of the Factories Act, 1934, and includes any premises including the precincts thereof which, having at any time after the 31st day of December, 1938, been a factory as defined in clause (j) of section 2 of the said Act, have not been exempted under section 14 from the provisions of section 5 of this Ordinance ;

(c) “factory buildings” includes all buildings comprised in the factory, and such other buildings (including residential buildings for staff and workmen, hospitals and welfare centres) within a radius of two miles from the main factory building as are in the same ownership or occupation

<sup>1</sup> For application of the Ordinance to different areas, see Vol. III, p. 254.

*War Risks (Factories) Insurance—contd.*

as the factory and are used for the purposes of the factory ;

- (d) “ the Fund ” means the War Risks (Factories) Insurance Fund constituted under section 7 ;
- (e) “ insurable value ” of property means the value of the property as ascertained for the purposes of insurance under this Ordinance ;
- (f) “ occupier ” of a factory has the meaning assigned to the word in clause (l) of section 2 of the Factories Act, 1934 ;
- (g) “ owner ” of a factory includes, when parts of the property insurable under this Ordinance in relation to the factory are owned by different persons, each such person in respect of the part owned by him ;
- (h) “ prescribed ” means prescribed by rules made under this Ordinance ;
- (i) “ property insurable under this Ordinance ” means, in relation to any factory, the factory buildings, all plant and machinery in the factory, and such other plant and machinery as may be prescribed ;
- (j) “ the Scheme ” means the War Risks (Factories) Insurance Scheme referred to in sub-section (1) of section 3 ;
- (k) “ war risks ” means such risks arising from—
  - (i) action taken by an enemy or action taken in combating an enemy or in repelling an imagined attack by an enemy,
  - (ii) measures taken under proper authority to avoid the spreading of, or otherwise to mitigate, the consequences of damage occurring (whether accidentally or not) as the direct result of any such action as aforesaid,
  - (iii) precautionary or preparatory measures taken under proper authority with a view to preventing or hindering the carrying out of any attack by an enemy, being measures involving risk to property,
  - (iv) precautionary or preparatory measures involving the doing of work on land and take under proper authority in any way in anticipation of enemy action, being measures involving risk to property,

*War Risks (Factories) Insurance—contd.*

(6) Different rates of premium may be prescribed under sub-section (4) for the purpose of differentiating from other factories and other property insurable under this Ordinance—

- (a) factories established after the inauguration of the Scheme,
- (b) property insurable under this Ordinance which consists of additions made after the inauguration of the Scheme to the property insurable under this Ordinance appertaining to a factory,
- (c) property insurable under this Ordinance which consists of restorations or reconstructions of property insurable under this Ordinance which has after the inauguration of the Scheme suffered damage or destruction arising from a war risk.

Employment  
of agents by  
the Central  
Government.

4. The Central Government may employ or authorize the employment of any person or firm to act as its agents for any of the purposes of this Ordinance, and may pay to persons or firms so employed such remuneration as the Central Government thinks fit :

Provided that no person or firm shall be so employed unless that person or firm is either—

- (a) a member of an association prescribed in this behalf, or
- (b) a person who in British India has a standing contract with underwriters who are members of the Society of Lloyd's whereby such person is authorised within the terms of such contract to issue protection notes, cover notes or other documents granting insurance against war risks.

Compulsory  
insurance.

5. (1) Every owner of a factory, except a factory belonging to the Crown or a factory exempted under section 14 from the provisions of this Ordinance, shall by such date as may be specified in this behalf by the Central Government, by notification in the official Gazette, take out a policy of insurance against war risks issued in accordance with the Scheme, whereby he is insured in respect of all property insurable under this Ordinance which appertains to the factory for a sum not less than the insurable value of such property :

Provided that, where the owner of the factory is not himself the occupier of the factory, the occupier of the factory shall, unless the owner has already taken out a policy of insurance as required by this sub-section, himself

*War Risks (Factories) Insurance—contd.*

take out the policy, and in such a case the occupier shall be deemed to act as the agent of the owner and shall be entitled to receive from the owner all sums paid as premiums on the policy. .

(2) The obligation imposed by sub-section (1) includes, when the owner of the factory is required by the Central Government to reconstruct a factory which has suffered damage, an obligation to take out an additional policy of insurance as required by the sub-section in respect of the reconstructed factory.

(3) When a factory in respect of which a policy of insurance against war risks has been taken out as required by this section is transferred from one owner to another or there is a change of occupier of the factory, the policy may be transferred to the new owner or occupier, and such new owner or occupier shall succeed to all rights and liabilities under and in relation to the policy as if the policy had been in the first instance taken out by him.

(4) Whoever contravenes the provisions of sub-section (1) or the proviso thereto, or, having taken out a policy of insurance as required by that sub-section, fails to pay any instalment of premium thereon which is subsequently due, shall be punishable with fine which may extend to two thousand rupees and with a further fine which may extend to one thousand rupees for every day after the first on which the contravention or failure continues.

6. (1) After the date on which the Scheme is put into operation, no person shall, except as a person authorized by the Central Government as their agent to issue policies in pursuance of the Scheme, carry on the business of insuring factories in British India against war risks in respect of property insurable under this Ordinance. Restriction on carrying on certain insurance business.

(2) Whoever contravenes the provisions of sub-section (1) shall be punishable with fine which may extend to five thousand rupees and with a further fine which may extend to one thousand rupees for every day after the first on which the contravention continues.

7. (1) The Central Government shall establish a fund for the purposes of this Ordinance, to be called the War Risks (Factories) Insurance Fund into which shall be paid all sums received by the Central Government by way of insurance premiums under the Scheme or by way of payments made on composition of offences under section 12, and out of which shall be paid all sums required for the discharge by the Central Government of any of its liabilities under the War Risks (Factories) Insurance Fund.

*War Risks (Factories) Insurance—contd.*

Scheme, or for payments by the Central Government under section 9, or for the payment by the Central Government of the remuneration and expenses of agents employed for the purposes of the Scheme.

(2) If at any time when a payment is to be made out of the Fund the sum standing to the credit of the Fund is less than the sum required for the making of that payment, an amount equal to the deficiency shall be paid into the Fund as an advance out of general revenues.

(3) If at any time the amount standing to the credit of the Fund exceeds the sum which, in the opinion of the Central Government, is likely to be required for the making of payments out of the Fund, the excess shall be paid into general revenues.

(4) The Central Government shall prepare in such form and manner as may be prescribed and shall publish either annually, or at such shorter intervals as may be prescribed, an account of all sums received into and paid out of the Fund.

Power of  
Central  
Government  
to obtain  
information.

8. (1) Any person authorized in this behalf by the Central Government may, for the purpose of ascertaining whether or not the owner or occupier of a factory has taken out a policy of insurance as required by this Ordinance in respect of all property insurable under this Ordinance which appertains to the factory, or for the purpose of investigating the insurable value of such property, or for the purpose of estimating the damage suffered by such property,—

(a) require the owner or occupier of a factory to submit to him such accounts, books or other documents or to furnish to him such information as he may reasonably think necessary, or

(b) at any reasonable time enter any premises or upon any property appertaining to a factory, inspect such premises or property, and require any person found therein or thereon, whom he believes to be in possession of information relevant to his investigation, to furnish to him such information as he may reasonably think necessary.

(2) Whoever wilfully obstructs any person in the exercise of his powers under this section or fails without reasonable excuse to comply with any request made thereunder shall, in respect of each occasion on which any such obstruction or failure takes place, be punishable with fine which may extend to one thousand rupees.

*War Risks (Factories) Insurance—contd.*

(3) Whoever, in purporting to comply with his obligations under this section, knowingly or recklessly makes a statement false in a material particular, shall be punishable with fine which may extend to one thousand rupees.

9. Where the Central Government requires the owner of a factory to remove the factory and to reconstruct it in another locality, the Central Government shall make to such owner out of the Fund such payments, in addition to any sum payable under the policy of insurance, as it considers sufficient to defray the cost of the removal and, if necessary, the replacement of any part of the property in respect of which no compensation is payable.

Payments towards cost of removal and reconstruction of factory.

10. Any instalment of premium due on a policy of insurance issued under the Scheme may be recovered as an arrear of land-revenue.

Recovery of arrears of premium instalments.

11. No prosecution for any offence punishable under this Ordinance shall be instituted against any person except by or with the consent of the Central Government or an authority authorized in this behalf by the Central Government.

Limitation of prosecutions.

12. Any offence punishable under sub-section (4) of section 5 may, either before or after the institution of the prosecution, be compounded by the Central Government, or by any authority authorized in this behalf by the Central Government, on payment for credit to the Fund of such sum as the Central Government or such authority, as the case may be, thinks fit.

Compensation of offences.

13. No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Ordinance.

Bar of legal proceedings.

14. The Central Government may, by notification in the official Gazette, exempt any factory or any description of factories or any premises including the precincts thereof which have at any time after the 31st day of December, 1933, been a factory as defined in clause (j) of section 2 of the Factories Act, 1934, from the provisions of section 5 and may by order declare that any factory or any description of factories so exempted may, if the owner so wishes, be insured under the Scheme.

Power to exempt factories.

XXV of 1934.

15. (1) The Central Government may, by notification in the official Gazette, make rules to carry into effect the provisions of this Ordinance.

Power to make rules.



*War Risks (Factories) Insurance—concl'd.*

(2) Without prejudice to the generality of the foregoing power, such rules may—

- (a) prescribe the method of ascertaining the value of property for the purposes of insurance under this Ordinance ;
- (b) prescribe the plant and machinery other than plant and machinery in the factory which shall be properly insurable under this Act ;
- (c) prescribe the risks which shall be deemed to be war risks for the purposes of clause (k) of section 2 ;
- (d) prescribe the forms of the policies of insurance referred to in clause (c) of sub-section (4) of section 3 and the period in respect of which such policies shall be issued ;
- (e) prescribe the associations referred to in clause (a) of the proviso to section 4 ;
- (f) prescribe the form of and the manner of preparing the account referred to in sub-section (4) of section 7.

Power of  
Central  
Government  
to extend  
Ordinance  
and Scheme  
to certain  
insurance  
projects.

16. (1) The Central Government may, by notification in the official Gazette, declare that the provisions of this Ordinance and of the Scheme made thereunder shall apply to the insuring against war risks of—

- (a) the machinery above ground appertaining to mines, as defined in the Indian Mines Act, 1923, IV of 1923.
- (b) the distribution systems of gas supply undertakings, or
- (c) the whole or a specified part of the distribution and transmission systems, sub-stations, switch houses and transformer houses of electric supply undertakings generally, or of specified electric supply undertakings,

as they apply to property insurable under this Ordinance which appertains to a factory.

(2) In interpreting this Ordinance as applied by a notification under clause (a) of sub-section (1) to mines, references to the owner of a factory shall be read as references to the owner or agent of a mine as defined in the Indian Mines Act, 1923, and references to the occupier of a factory shall be read as references to the manager of a mine for the purposes of the Indian Mines Act, 1923. IV of 1923.

## ORDINANCE No. XIII OF 1942.

## THE WOMEN'S AUXILIARY CORPS ORDINANCE, 1942.

## AN ORDINANCE

*To constitute a women's auxiliary corps for service in India as part of His Majesty's Military Forces.*

*(Published in the Gazette of India Extraordinary of the 9th April, 1942.)*

WHEREAS an emergency has arisen which makes it necessary to constitute a women's auxiliary corps for service in India as part of His Majesty's Military Forces, and to provide for the organization and discipline thereof;

20 Geo. 5, c. 2.

NOW, THEREFORE, in exercise of the powers conferred by section 72 of the Government of India Act, as set out in the Ninth Schedule to the Government of India Act, 1935, the Governor General is pleased to make and promulgate the following Ordinance :—

1. (1) This Ordinance may be called the Women's Auxiliary Corps Ordinance, 1942. Short title, extent and application.

(2) It extends to the whole of British India and applies to British subjects in any part of India, and to members of the Women's Auxiliary Corps, India, wherever they may be.

2. In this Ordinance, unless there is anything repugnant in the subject or context,— Definitions.

(a) "the Corps" means the Women's Auxiliary Corps, India, constituted under section 3;

(b) "enrolled" means enrolled under this Ordinance;

(c) "prescribed" means prescribed by rules made under this Ordinance;

(d) "regulations" means regulations made under section 11.

3. There shall be raised and maintained in the manner hereinafter provided an auxiliary force for service in India to be designated the Women's Auxiliary Corps, India. Constitution of Women's Auxiliary Corps, India.

4. Any British subject or any subject of an Indian State, if a woman and above the age of eighteen, shall be eligible to be enrolled in the Corps, and, if she satisfies the prescribed conditions, may be enrolled therein in such manner and for such period as may be laid down by regulations, and thereupon shall become subject to the provisions of this Ordinance. Enrolment.

*Women's Auxiliary Corps—contd.*

Personnel of  
the Corps and  
appointment  
of officers.

5. (1) There shall be the following classes of personnel in the Corps, namely :—

- (a) officers, and
- (b) enrolled persons.

(2) Officers shall be appointed by the Central Government by notification in the official Gazette.

(3) Enrolled persons may be promoted to warrant and non-commissioned rank in accordance with the regulations.

Liability to  
serve.

6. Every enrolled person shall be bound to serve until she is discharged from the Corps, and shall be subject to all rules and regulations that may be made under this Ordinance relating to the Corps.

Dismissal from  
Corps.

7. The Commander-in-Chief of His Majesty's Forces in India or any authority empowered by him in this behalf may dismiss any enrolled person from the Corps.

Liability to  
undergo  
training and  
perform duties.

8. Every enrolled person shall be bound to undergo such training and in such manner and shall be bound to perform such duties in connection with His Majesty's Military Forces in India as may be laid down by regulations.

Application of  
Army Act.

9. The Army Act shall, to such extent and subject to such adaptations and modifications as may be prescribed, apply to officers of, and other persons enrolled in, the Corps as they apply to officers of the regular forces and men of the regular forces, respectively.

Power to make  
rules.

10. (1) The Central Government may, by notification in the official Gazette, make rules to carry out the purposes of this Ordinance.

(2) In particular and without prejudice to the generality of the foregoing power, rules may be made under this section—

- (a) for the medical examination of persons offering themselves for enrolment under section 4 ;
- (b) prescribing the conditions governing the grant of, and the rates of pay for, and providing for the grant of allowances to, enrolled persons ;
- (c) providing for any other matter which under this Ordinance is to be or may be prescribed.

Power to make  
regulations.

11. The Commander-in-Chief of His Majesty's Forces in India may make regulations consistent with this Ordinance and the rules made thereunder providing for all matters to be laid down by regulations, and generally for all details connected with the organization and personnel of the Corps, and for the enrolment, discharge, duties, training, clothing, equipment, allowances and leave of persons enrolled.

## ORDINANCE No. XVI of 1942.

THE REGISTRATION OF FOREIGNERS ACT (EXTENDING  
ORDINANCE, 1942.

## AN ORDINANCE

*To apply the Registration of Foreigners Act, 1939, to certain persons to whom that Act does not at present apply.*

*(Published in the Gazette of India Extraordinary of the 21st April, 1942.)*

XVI of 1939.

WHEREAS an emergency has arisen which makes it necessary to apply the Registration of Foreigners Act, 1939, to certain persons to whom that Act does not at present apply ;

26 Geo. 5, c. 2.

Now, THEREFORE, in exercise of the powers conferred by section 72 of the Government of India Act, as set out in the Ninth Schedule to the Government of India Act, 1935, the Governor General is pleased to make and promulgate the following Ordinance :—

1. (1) This Ordinance may be called the Registration of Foreigners Act (Extending) Ordinance, 1942.

Short title,  
extent and  
commence-  
ment.

(2) It extends to the whole of British India.

(3) It shall come into force at once.

XVI of 1939.

2. The provisions of the Registration of Foreigners Act, 1939, and of the rules and orders made thereunder shall apply to and in relation to any person who was at birth a subject of any State in Europe excluding His Majesty's dominions in Europe, or a Japanese, Chinese or Thai subject, as they apply to and in relation to foreigners as defined for the purposes of that Act.

Application of  
Act XVI of  
1939 to certain  
persons.

## ORDINANCE No. XVII of 1942.

THE UNITED PROVINCES SPECIAL ARMED CONSTABULARY  
ACT (EXTENSION) ORDINANCE, 1942.

## AN ORDINANCE

*To apply the provisions of the United Provinces Special Armed Constabulary Act, 1942, to members of the United Provinces Special Armed Constabulary constituted under that Act when serving outside the United Provinces.*

*(Published in the Gazette of India Extraordinary of the 21st April, 1942.)*

WHEREAS an emergency has arisen which makes it necessary to apply the provisions of the United Provinces Special

*United Provinces Special Armed Constabulary Act (Extension)*—contd. *Collective Fines.*

Armed Constabulary Act, 1942, to members of the United Provinces Special Armed Constabulary constituted under that Act when serving outside the United Provinces ; U. P. Act V of 1942.

Now, THEREFORE, in exercise of the powers conferred by section 72 of the Government of India Act, as set out in the Ninth Schedule to the Government of India Act, 1935, 26 Geo. 5, c. 2. the Governor General is pleased to make and promulgate the following Ordinance :—

Short title,  
extent and  
commence-  
ment.

1. (1) This Ordinance may be called the United Provinces Special Armed Constabulary Act (Extension) Ordinance, 1942.

(2) It extends to the whole of British India.

(3) It shall come into force at once.

Application of  
U. P. Act V of  
1942 to mem-  
bers of the  
United Pro-  
vinces Special  
Armed Con-  
stabulary  
serving out-  
side the  
United Pro-  
vinces.

2. The provisions of the United Provinces Special Armed Constabulary Act, 1942, shall apply to and in relation to members of the United Provinces Special Armed Constabulary constituted under that Act when serving in any Province other than the United Provinces as they apply to and in relation to members of the said Constabulary within the United Provinces. U. P. Act V of 1942.

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ORDINANCE No. XX OF 1942.

THE COLLECTIVE FINES ORDINANCE, 1942.

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AN ORDINANCE

*To provide for the imposition of collective fines.*

(Published in the Gazette of India Extraordinary of the 13th May, 1942.)

WHEREAS an emergency has arisen which makes it necessary to provide for the imposition of collective fines in connection with offences prejudicially affecting the defence of British India or the efficient prosecution of war ;

Now, THEREFORE, in exercise of the powers conferred by section 72 of the Government of India Act, as set out in the Ninth Schedule to the Government of India Act, 1935, 26 Geo. 5, c. 2. the Governor General is pleased to make and promulgate the following Ordinance :—

Short title,  
extent and  
commence-  
ment.

1. (1) This Ordinance may be called the Collective Fines Ordinance, 1942.

*Collective Fines—contd.*

(2) It extends to the whole of British India.

(3) It shall come into force at once.

2. In this Ordinance,—

*Interpretation.*

(a) "District Magistrate" means in a Presidency-town and within the limits of the tract defined by notification under section 1 of the Calcutta Suburban Police Act, 1866, as the limits to which the operation of that Act is confined, the Commissioner of Police;

(b) "Provincial Government" means in relation to a Chief Commissioner's Province the Chief Commissioner.

Ben. Act II of  
1868.

3. (1) If it appears to the Provincial Government that the inhabitants of any area are concerned in or abetting the commission of offences prejudicially affecting the defence of British India or the efficient prosecution of war, or are harbouring persons concerned in the commission of such offences, or are failing to render all the assistance in their power to discover or apprehend the offender or offenders, or are suppressing material evidence of the commission of such offences, the Provincial Government may, by notification in the official Gazette, impose a collective fine on the inhabitants of that area.

*Imposition of  
collective fines  
on inhabitants  
of area.*

(2) The Provincial Government may exempt any person or class or section of such inhabitants from liability to pay any portion of such fine.

(3) The District Magistrate, after such inquiry as he may deem necessary, shall apportion such fine among the inhabitants who are liable collectively to pay it, and such apportionment shall be made according to the District Magistrate's judgment of the respective means of such inhabitants.

(4) The portion of such fine payable by any person may be recovered from him as a fine or as arrears of land-revenue.

*Explanation.*—For the purposes of this section the expression "inhabitants of an area" includes persons who themselves or by their agents or servants occupy or hold land or other immovable property within such area, and landlords who themselves or by their agents or servants collect rents from holders or occupiers of land in such area, notwithstanding that they do not actually reside therein.

## ORDINANCE No. XXI of 1942.

THE RAILWAY AIR RAID PRECAUTIONS SERVICES ORDINANCE,  
1942.

## AN ORDINANCE

*To provide for the constitution of Air Raid Precautions Services for railways.*

*(Published in the Gazette of India Extraordinary of the 16th May, 1942.)*

WHEREAS an emergency has arisen which makes it necessary to provide for the constitution of Air Raid Precautions Services for railways to carry out measures for the protection of persons and property against hostile attack whether from the air or otherwise ;

NOW, THEREFORE, in exercise of the powers conferred by section 72 of the Government of India Act, as set out in the Ninth Schedule to the Government of India Act, 1935, 26 Geo. 5, c. 2, the Governor General is pleased to make and promulgate the following Ordinance :—

Short title,  
extent and  
commence-  
ment.

1. (1) This Ordinance may be called the Railway Air Raid Precautions Services Ordinance, 1942.

(2) It extends to the whole of British India.

(3) It shall come into force at once.

Definitions.

2. In this Ordinance, unless there is anything repugnant in the subject or context,—

(a) “railway”, “railway administration” and “railway servant” have the meanings assigned to those expressions in the Indian Railways Act, 1890; 1X of 1890.

(b) “railway area” means any area owned, leased, rented or otherwise occupied for the purposes of or in connection with a railway.

Constitution  
of Railway  
Air Raid  
Precautions  
Services.

3. (1) Any railway administration may constitute for any railway area under its control a body to be called a Railway Air Raid Precautions Service, and may appoint a person, hereinafter called the Controller, to command such body in the area for which it has been constituted.

(2) A railway administration may include within the area for which a Railway Air Raid Precautions Service is so constituted such other areas, not being railway areas, as may be agreed upon in this behalf between the Provincial Government and the railway administration.

*Railway Air Raid Precautions Services—contd.*

4. (1) The railway administration, or an authority authorised in this behalf by the railway administration, may appoint as members of a Railway Air Raid Precautions Service—

Appointment as members of and release from Air Raid Precautions Service.

(a) so many of the railway servants employed by the railway administration as it or such authority, as the case may be, considers necessary for the efficient working of the Service, and

(b) persons, not being railway servants, who offer themselves voluntarily for such appointment.

(2) Every person appointed as a member of a Railway Air Raid Precautions Service shall be given a certificate of membership in such form as may be prescribed.

(3) A railway servant or other person appointed as a member of a Railway Air Raid Precautions Service may be released therefrom at any time by the authority by which he was appointed.

5. Every person appointed as a member of a Railway Air Raid Precautions Service shall be bound to serve in such Service and to perform the duties laid down in or prescribed under this Ordinance for members of such Service until his release therefrom as provided in sub-section (3) of section 4, and shall while so serving be subject to the provisions of any rules made under section 12.

Liability of members to serve until released.

6. The Controller of a Railway Air Raid Precautions Service may appoint any member of the Service to any office of command in the Service.

Appointment to offices of command.

7. (1) The members of a Railway Air Raid Precautions Service shall perform such functions in relation to the carrying out of measures for the protection of persons and property against hostile attack as may be assigned to them by or under this Ordinance or any other law for the time being in force.

Functions of members of Railway Air Raid Precautions Services.

(2) The Controller, or any person authorised in this behalf by the Controller or by the railway administration, may at any time call out a member of a Railway Air Raid Precautions Service to undergo training or to discharge any duty laid down in or prescribed under this Ordinance for members of the Service:

Provided that the total period of time during which a member of a Railway Air Raid Precautions Service who is a railway servant may be so required to undergo training and discharge duties under this Ordinance shall not exceed forty-eight hours in any one month in addition to his normal hours of railway duty.



*Railway Air Raid Precautions Services.—contd.*

(3) Nothing contained in the Factories Act, 1934, or XXV of 1934, in the Railway Servants' Hours of Employment Regulations limiting the hours of work of railway servants shall operate to affect the liability imposed on railway servants by sub-section (2).

Application of  
the Railway  
Disciplinary  
Rules.

8. The Railway Disciplinary Rules shall apply to a member of a Railway Air Raid Precautions Service who is a railway servant while he is undergoing training or discharging duties under this Ordinance whether when called out under sub-section (2) of section 7 or otherwise, in the same manner as they apply to him in respect of his ordinary duties as a railway servant.

Penalty for  
breach of  
duty.

9. If any member of a Railway Air Raid Precautions Service when called out under sub-section (2) of section 7 without sufficient excuse neglects or refuses to obey such order or to discharge any duty laid down in or prescribed under this Ordinance for members of the Service, or at any time neglects or refuses to obey any lawful order or direction given to him for the performance of his duties under this Ordinance, or commits a breach of any rule of discipline made under section 12, he shall, unless he is dealt with under the Railway Disciplinary Rules, be punishable with imprisonment for a term which may extend to one year and shall also be liable to fine.

Sanction of  
prosecutions.

10. No prosecution for any offence punishable under section 9 shall be instituted against any person except with the previous sanction of the railway administration by which the Railway Air Raid Precautions Service of which such person is a member was constituted.

Bar of legal  
proceedings.

11. No suit, prosecution or other legal proceeding shall lie against the Controller or any member of a Railway Air Raid Precautions Service for anything which is in good faith done or intended to be done in pursuance of this Ordinance or any rules made thereunder.

Rule-making  
power.

12. The Central Government may make rules consistent with this Ordinance,—

- (a) prescribing the duties of members of Railway Air Raid Precautions Services and regulating the manner in which they may be called out for training or the discharge of their duties ;
- (b) regulating the organisation, appointment, conditions of service, discipline, accoutrements and clothing of members of any or all Railway Air Raid Precautions Services ;

*Railway Air Raid Precautions Services—concl'd. Deputy Commander-in-Chief (Powers).*

- (c) prescribing the form of certificates of membership of any or all Railway Air Raid Precautions Services ;
- (d) generally for giving effect to the provisions of this Ordinance.

ORDINANCE No. XXII of 1942.

THE DEPUTY COMMANDER-IN-CHIEF (POWERS) ORDINANCE,  
1942.

AN ORDINANCE

*To provide for the exercise by an officer appointed by the Central Government of certain powers and functions vested in the Commander-in-Chief of His Majesty's Forces in India.*

*(Published in the Gazette of India Extraordinary of the 22nd May, 1942.)*

WHEREAS an emergency has arisen which makes it necessary to provide for the exercise by an officer appointed by the Central Government of certain powers and functions vested in the Commander-in-Chief of His Majesty's Forces in India ;

26 Geo. 5, c. 2.

Now, THEREFORE, in exercise of the powers conferred by section 72 of the Government of India Act, as set out in the Ninth Schedule to the Government of India Act, 1935, the Governor General is pleased to make and promulgate the following Ordinance :—

1. (1) This Ordinance may be called the Deputy Commander-in-Chief (Powers) Ordinance, 1942.

Short title and commencement.

(2) It shall come into force at once.

2. Any officer appointed to be Deputy Commander-in-Chief of His Majesty's Forces in India may exercise any of the powers and functions vested in the Commander-in-Chief of His Majesty's Forces in India by or under the Army Act or by or under any Indian law for the time being in force.

44 & 45 Vict.,  
s. 53.

Powers of Deputy Commander-in-Chief.



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PART IV

**PROCLAMATIONS AND NOTIFICATIONS  
PUBLISHED IN INDIA RELATING TO  
THE OUTBREAK OF WAR**

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*Part IV.—Proclamations and Notifications published in India relating to the outbreak of War.*

*Defence Co-ordination Department, No. 221-M., dated the 3rd September, 1939.*—The following Proclamation by His Excellency the Governor General, dated the 3rd September, 1939, is published for general information :—

**PROCLAMATION.**

In pursuance of sub-section (1) of section 102 of the Government of India Act, 1935, I, Victor Alexander John, Marquess of Linlithgow, Governor General of India, by this Proclamation declare that a grave emergency exists whereby the security of India is threatened by war.

[ *Gazette of India*, Extraordinary, dated the 3rd September, 1939.]

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*Defence Co-ordination Department, No. 223-M., dated the 3rd September, 1939.*—The following Proclamation by His Excellency the Governor General, dated the 3rd September, 1939, is published for general information :—

“I, Victor Alexander John, Marquess of Linlithgow, Governor General of India and *ex-officio* Vice-Admiral therein, being satisfied thereof by information received by me, do hereby proclaim that war has broken out between His Majesty and Germany.”

[ *Gazette of India*, Extraordinary, dated the 3rd September, 1939.]

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*External Affairs Department, No. 1-W., dated the 3rd September, 1939.*—It is hereby notified for general information that war has broken out between His Majesty and Germany.

[ *Gazette of India*, Extraordinary, dated the 3rd September, 1939.]

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*Political Department, No. 1-W., dated the 3rd September, 1939.*—It is hereby notified for general information that war has broken out between His Majesty and Germany.

[ *Gazette of India*, Extraordinary, dated the 3rd September, 1939.]

*PROCLAMATION.*

*Defence Department, No. 1350, dated the 7th October, 1939.*—WHEREAS by the fourth section of the Royal Reserve (Volunteer) Act, 1859, it is enacted that it shall be lawful for the King on such occasions as His Majesty shall deem fit (the occasion being first communicated to Parliament if Parliament be sitting, or declared in Council and notified by Proclamation, if Parliament be not sitting or in being) to order and direct that the Volunteers under that Act, or so many or such part of them as His Majesty may deem necessary, shall be called into actual service ;

AND WHEREAS by the Royal Naval Reserve Volunteer Act, 1896, as amended by the Royal Naval Reserve Act, 1902, it is enacted that the power under the said Act of 1859, to raise and pay Volunteers may be exercised outside the British Islands in respect of British subjects ;

AND WHEREAS by the Naval Reserve Act, 1900, the Admiralty are authorised to raise and keep up a new division, commonly known as the Royal Fleet Reserve, of the Force raised under the first recited Act, in addition to the men raised under that Act, and such new division is liable to be called out as part of the Royal Naval Reserve under the said fourth section of the said Act of 1859 ;

AND WHEREAS by the Naval Forces Act, 1903, it is provided that the Admiralty may raise and maintain a force to be called the Royal Naval Volunteer Reserve, and that certain provisions of the said Act of 1859 (including the fourth section of that Act), as amended by any subsequent enactment shall apply to the force so raised ;

AND WHEREAS by the first section of the Naval Reserve (Mobilization) Act, 1900, amending the said Act of 1859, it is enacted that it shall be lawful for the King, where His Majesty orders and directs that Volunteers under the said Act of 1859 shall be called into actual services, to authorise the Admiralty to give, and when given to revoke or vary such directions as may seem necessary or proper for calling out all or any of the said Volunteers as the occasion may require ;

AND WHEREAS the King has communicated to Parliament (or so declared in Council) and notified by Proclamation that owing to the state of Public Affairs and the demands upon His Naval Forces for the protection of the Empire, an occasion has arisen for ordering and directing as in the first-mentioned Act is provided ;

*Part. IV—Proclamations and Notifications published 215  
in India relating to the outbreak of War.*

It is hereby notified that the King has ordered and directed that Volunteers under the said Act shall be called into actual service and has authorised the Lords Commissioners of the Admiralty to give, and when given to revoke or vary such direction as may seem necessary or proper for calling out all or any of the said Volunteers as the occasion may require.

LINLITHGOW,

*Governor General.*

[*Gazette of India*, Extraordinary, dated the 7th October, 1939.]

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*Defence Co-ordination Dept., No. 223-M., dated the 11th June, 1940.*—The following Proclamation by His Excellency the Governor General, dated the 11th June 1940, is published for general information :—

“ I, Victor Alexander John, Marquess of Linlithgow, Governor General of India and *ex-officio* Vice-Admiral therein, being satisfied thereof by information received by me, do hereby proclaim that war has broken out between His Majesty and Italy.”

[*Gazette of India*, Extraordinary, dated the 11th June, 1940.]

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*E. A. Dept., No. 11-W., dated the 11th June, 1940.*—It is hereby notified for general information that war has broken out between His Majesty and Italy.

[*Gazette of India*, Extraordinary, dated the 11th June, 1940.]

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*Pol. Dept., No. 6-W., dated the 11th June, 1940.*—It is hereby notified for general information that war has broken out between His Majesty and Italy.

[*Gazette of India*, Extraordinary, dated the 11th June, 1940.]

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*E. A. Dept., No. 12-W., dated the 15th June, 1940.*—It is notified for general information that the areas speci-



fied below, being in the occupation of the enemy, are enemy territories for purposes of the Defence of India Rules :—

The Protectorates of Bohemia and Moravia,

Slovakia,

The Free City of Danzig,

In Poland, the region of Suwalki, and the areas west of a line Kolno-Lomza—Ostrolenka—Malkin—River Bug (upto South of Sokal), thence north of a line Rawa Ruska-Jaroslav, thence west of the River San to its source,

The Kingdom of Denmark,\* excluding the Dependencies of Greenland and the Faroe Islands,

The Kingdom of Norway, excluding the Northern Provinces of Nordland, Troms, Finmark and Svalbard (Spitzbergen),

The Kingdom of the Netherlands, excluding its Dependencies,

The Grand Duchy of Luxembourg.

[ *Gazette of India*, 1940, Pt. I, p. 877.]

*E. A. Dept., No. 17-W., dated the 24th July, 1940.*—In amplification of the notification of the Government of India in the External Affairs Department, <sup>1</sup>No. 12-W., dated the 18th June, 1940, it is notified for general information that the area specified below, being in the occupation of the enemy, is enemy territory for purposes of the Defence of India Rules :—

The Kingdom of Belgium, excluding the Belgian Congo and the mandated territory of Ruanda Urundi.

[ *Gazette of India*, 1940, Pt. I, p. 1072.]

*D. C. Dept., No. 967-M./41, dated the 5th August, 1941.*—It is hereby notified for general information that the territories formerly known as Italian East Africa are areas in the occupation of His Majesty.

[ *Gazette of India*, 1941, Extraordinary, p. 475.]

\* This does not apply to the Kingdom of Iceland.

<sup>1</sup> p. 100 page.

*Part IV.—Proclamations and Notifications published in the London Gazette and in the London Gazette.*

*D. C. Dept., No. 225-M 1, dated the 7th December, 1911.—*  
The following Proclamation by His Excellency the Governor General, dated the 7th December, 1911, is published for general information:—

“I, Victor Alexander John, Marquess of Linlithgow, Governor General of India and *ex-officio* Vice-Admiral therein, being satisfied thereof by information received by me, do hereby proclaim that war has broken out between His Majesty and Finland.”

[*Gazette of India*, 1911, Extraordinary, p. 719.]

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*D. C. Dept., No. 225-M 1, dated the 7th December, 1911.—*  
The following Proclamation by His Excellency the Governor General, dated the 7th December, 1911, is published for general information:—

“I, Victor Alexander John, Marquess of Linlithgow, Governor General of India and *ex-officio* Vice-Admiral therein, being satisfied thereof by information received by me, do hereby proclaim that war has broken out between His Majesty and Hungary.”

[*Gazette of India*, 1911, Extraordinary, p. 719.]

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*D. C. Dept., No. 225-M 2, dated the 7th December, 1911.—*  
The following Proclamation by His Excellency the Governor General, dated the 7th December, 1911, is published for general information:—

“I, Victor Alexander John, Marquess of Linlithgow, Governor General of India and *ex-officio* Vice-Admiral therein, being satisfied thereof by information received by me, do hereby proclaim that war has broken out between His Majesty and Rumania.”

[*Gazette of India*, 1911, Extraordinary, p. 719.]

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*E. A. Dept., No. 15-W., dated the 7th December, 1911.—*  
It is hereby notified for general information, that war has broken out between His Majesty and Finland.

[*Gazette of India*, 1911, Extraordinary, p. 706.]

*E. A. Dept., No. 15/1/W., dated the 7th December, 1941.*—  
It is hereby notified for general information that war has broken out between His Majesty and Roumania.

[ *Gazette of India*, 1941, Extraordinary, p. 720.]

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*E. A. Dept., No. 15/2/W., dated the 7th December, 1941.*—  
It is hereby notified for general information that war has broken out between His Majesty and Hungary.

[ *Gazette of India*, 1941, Extraordinary, p. 720.]

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*Pol. Dept., No. 12-W., dated the 7th December, 1941.*—  
It is hereby notified for general information that war has broken out between His Majesty and Finland.

[ *Gazette of India*, 1941, Extraordinary, p. 720.]

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*Pol. Dept., No. 12/1/W., dated the 7th December, 1941.*—  
It is hereby notified for general information that war has broken out between His Majesty and Roumania.

[ *Gazette of India*, 1941, Extraordinary, p. 720.]

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*Pol. Dept., No. 12/2/W., dated the 7th December, 1941.*—  
It is hereby notified for general information that war has broken out between His Majesty and Hungary.

[ *Gazette of India*, 1941, Extraordinary, p. 720.]

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*D. C. Dept., No. 223-M., dated the 9th December, 1941.*—  
The following Proclamation by His Excellency the Governor General, dated the 9th December, 1941, is published for general information :—

“I, Victor Alexander John, Marquess of Linlithgow, Governor General of India and *ex-officio* Vice-Admiral therein, being satisfied thereof by information received by me, do hereby proclaim that war has broken out between His Majesty and Japan.”

[ *Gazette of India*, 1941, Extraordinary, p. 723.]

*E. A. Dept., No. 33-W., dated the 9th December, 1941.—*  
It is hereby notified for general information that war has broken out between His Majesty and Japan.

[ *Gazette of India*, 1941, Extraordinary, p. 723.]

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*Pol. Dept., No. 69/W/41, dated the 9th December, 1941.—*  
It is hereby notified for general information that war has broken out between His Majesty and Japan.

[ *Gazette of India*, 1941, Extraordinary, p. 723.]

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*D. C. Dept., No. 223-M., dated the 29th December, 1941.—*  
The following Proclamation by His Excellency the Governor General, dated the 29th December, 1941, is published for general information :—

“I, Victor Alexander John, Marquess of Linlithgow, Governor General of India and *ex-officio* Vice-Admiral therein, being satisfied thereof by information received by me, do hereby proclaim that war has broken out between His Majesty and Bulgaria.”

[ *Gazette of India*, 1941, Extraordinary, p. 763.]

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*E. A. Dept., No. 34-W., dated the 29th December, 1941.—*  
It is hereby notified for general information that war has broken out between His Majesty and Bulgaria.

[ *Gazette of India*, 1941, Extraordinary, p. 764.]

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*Pol. Dept., No. 71-W., dated the 29th December, 1941.—*  
It is hereby notified for general information that war has broken out between His Majesty and Bulgaria.

[ *Gazette of India*, 1941, Extraordinary, p. 764.]

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*E. A. Dept., No. 2-W., dated the 13th January, 1942.—*  
It is notified for general information that British and Indian interests in Japan proper will for the time being be looked after by the authorities of the Argentine and in Japanese-occupied territory by the authorities of Switzerland.

[ *Gazette of India*, 1942, Pt. I, p. 119.]

*E. A. Dept., No. 3-W., dated the 13th January, 1942.*—  
In supersession of the Notifications of the Government of India in the External Affairs Department Nos. 16-W., 1-W., 16-W., 21-W., 10-W., 14-W., and 19-W., dated the 15th September, 1939, 31st January, 10th July and 3rd September, 1940, 17th April, 2nd July and 5th August, 1941, respectively, it is notified for general information that British and Indian interests in Germany, Italy and the enemy-occupied countries in Europe will for the time being be looked after by the authorities of Switzerland.

[*Gazette of India*, 1942, Pt. I, p. 119.]

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*D. C. Dept., No. 223 M., dated the 9th February, 1942.*—  
The following Proclamation by His Excellency the Governor General, dated the 9th February, 1942, is published for general information :—

“ I, Victor Alexander John, Marquess of Linlithgow, Governor General of India and *ex-officio* Vice-Admiral therein, being satisfied thereof by information received by me, do hereby proclaim that war has broken out between His Majesty and Thailand.”

[*Gazette of India*, 1942, Extraordinary, p. 182.]

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*E. A. Dept., No. 8 W., dated the 9th February, 1942.*—  
It is hereby notified for general information that war has broken out between His Majesty and Thailand.

[*Gazette of India*, 1942, Extraordinary, p. 182.]

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*P. I. Dept., No. 14-W., dated the 9th February, 1942.*—  
It is hereby notified for general information that war has broken out between His Majesty and Thailand.

[*Gazette of India*, 1942, Extraordinary, p. 182.]

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**PART V**

**ROYAL PROCLAMATIONS, ORDERS IN  
COUNCIL, ETC.**

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*Commerce Dept., No. 106 (7)-E. T. (A) 41-1, dated the 21st February, 1942.*—The following Proclamations by His Majesty are published for general information :—

**I.**

**BY THE KING.**

**A Proclamation**

Specifying the Articles to be Treated as Contraband of War.

GEORGE, R. I.

WHEREAS a state of War exists between Us, on the one hand, and Germany on the other :

AND WHEREAS it is necessary to specify the Articles which it is Our intention to treat as Contraband of War :

Now, THEREFORE, We do hereby Declare, by and with the advice of Our Privy Council, that during the continuance of the War, or until we do give further public notice, the Articles enumerated in Schedule I hereto will be treated as Absolute Contraband, and the Articles enumerated in Schedule II hereto will be treated as Conditional Contraband :—

**SCHEDULE I.**

- (a) All kinds of arms, ammunition, explosives, chemicals or appliances suitable for use in chemical warfare, and machines for their manufacture or repair; component parts thereof; articles necessary or convenient for their use; materials or ingredients used in their manufacture; articles necessary or convenient for the production or use of such materials or ingredients.
- (b) Fuel of all kinds; all contrivances for, or means of, transportation on land, in the water or air, and machines used in their manufacture or repair; component parts thereof; instruments, articles or animals necessary or convenient for their use; materials or ingredients used in their manufacture; articles necessary or convenient for the production or use of such materials or ingredients.



- (c) All means of communication, tools, implements, instruments, equipment, maps, pictures, papers, and other articles, machines, or documents necessary or convenient for carrying on hostile operations; articles necessary or convenient for their manufacture or use.
- (d) Coin, bullion, currency, evidences of debt; also metal, materials, dies, plates, machinery, or other articles necessary or convenient for their manufacture.

#### SCHEDULE II.

- (e) All kinds of food, foodstuffs, feed, forage, and clothing and articles and materials used in their production.

Given at Our Court at Buckingham Palace, this Third day of September, in the year of our Lord one thousand nine hundred and thirty-nine, and in the Third year of Our Reign.

GOD SAVE THE KING.

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## II.

BY THE KING.

### A Proclamation

Specifying the Articles to be treated as Contraband of War  
in the War with Italy.

GEORGE, R. I.

WHEREAS, by reason of a declaration of War by Italy against Us, a state of War exists between Us and Italy :

AND WHEREAS it is necessary to specify the articles which it is Our intention to treat as Contraband of War :

NOW, THEREFORE, We do hereby Declare, by and with the advice of Our Privy Council, that during the continuance of the War, or until We do give further public notice, the Proclamation issued on September 3rd, 1939, wherein were specified the articles which it is Our intention to treat as Contraband of War during the continuance of the War with Germany, shall be deemed to specify the articles which it is Our intention to treat as Contraband of War during the continuance of the War with Italy.

Given at Our Court at Buckingham Palace, this  
Eleventh day of June, in the year of our Lord one  
thousand nine hundred and forty, and in the  
Fourth year of Our Reign.

GOD SAVE THE KING.

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III.

BY THE KING.

**A Proclamation**

Specifying the Articles to be treated as Contraband of War  
in the War with Japan.

GEORGE, R. I.

WHEREAS a state of War exists between Us and Japan :

AND WHEREAS it is necessary to specify the articles which  
it is Our intention to treat as Contraband of War :

NOW, THEREFORE, We do hereby Declare, by and with  
the advice of Our Privy Council, that during the continuance  
of the War, or until We do give further public notice, the  
Proclamation issued on September 3rd, 1939, wherein were  
specified the articles which it is Our intention to treat as  
Contraband of War during the continuance of the War with  
Germany, shall be deemed to specify the articles which it is  
Our intention to treat as Contraband of War during the  
continuance of the War with Japan.

Given at Our Court at Buckingham Palace, this  
Ninth day of December, in the year of our Lord  
one thousand nine hundred and forty-one, and  
in the Fifth year of Our Reign.

GOD SAVE THE KING.

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IV.

BY THE KING.

**A Proclamation**

Specifying the Articles to be treated as Contraband of War  
in the War with Finland.

GEORGE, R. I.

WHEREAS a state of War exists between Us and Finland :

AND WHEREAS it is necessary to specify the articles which  
it is Our intention to treat as Contraband of War :

NOW, THEREFORE, We do hereby Declare, by and with  
the advice of Our Privy Council, that during the continuance  
of the War, or until We do give further public notice, the

Proclamation issued on September 3rd, 1939, wherein were specified the articles which it is Our intention to treat as Contraband of War during the continuance of the War with Germany, shall be deemed to specify the articles which it is Our intention to treat as Contraband of War during the continuance of the War with Finland.

Given at Our Court at Buckingham Palace, this  
Ninth day of December, in the year of our Lord  
one thousand nine hundred and forty-one and  
in the Fifth year of Our Reign.

GOD SAVE THE KING.

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V.

BY THE KING.

#### **A Proclamation**

Specifying the Articles to be treated as Contraband of War  
in the War with Hungary.

GEORGE, R. I.

WHEREAS a state of War exists between Us and Hungary:

AND WHEREAS it is necessary to specify the articles which  
it is Our intention to treat as Contraband of War :

NOW, THEREFORE, We do hereby Declare, by and with  
the advice of Our Privy Council, that during the continuance  
of the War, or until We do give further public notice, the  
Proclamation issued on September 3rd, 1939, wherein were  
specified the articles which it is Our intention to treat as  
Contraband of War during the continuance of the War with  
Germany, shall be deemed to specify the articles which it  
is Our intention to treat as Contraband of War during the  
continuance of the War with Hungary.

Given at Our Court at Buckingham Palace, this  
Ninth day of December, in the year of our Lord  
one thousand nine hundred and forty-one and in  
the Fifth year of Our Reign.

GOD SAVE THE KING.

**VI.**

**BY THE KING.**

**A Proclamation**

Specifying the Articles to be treated as Contraband of War  
in the War with Roumania.

GEORGE, R. I.

WHEREAS a state of War exists between Us and Roumania :

AND WHEREAS it is necessary to specify the articles which  
it is Our intention to treat as Contraband of War :

NOW, THEREFORE, We do hereby Declare, by and with  
the advice of Our Privy Council, that during the continuance  
of the War, or until We do give further public notice, the  
Proclamation issued on September 3rd, 1939, wherein were  
specified the articles which it is Our intention to treat as  
Contraband of War during the continuance of the War with  
Germany, shall be deemed to specify the articles which it is  
Our intention to treat as Contraband of War during the  
continuance of the War with Roumania.

Given at Our Court at Buckingham Palace, this  
Ninth day of December, in the year of our Lord  
one thousand nine hundred and forty-one and  
in the Fifth year of Our Reign.

**GOD SAVE THE KING.**

[ *Gazette of India*, 1942, Pt. I, p. 393.]

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*Commerce Dept., No. 106(7)-B. T. (A)/41-(2), dated the 7th  
March, 1942.*—The following Proclamation by His Majesty  
is published for general information :—

**BY THE KING.**

**A Proclamation**

Specifying the articles to be treated as Contraband of War  
in the War with Bulgaria.

GEORGE, R. I.

WHEREAS a state of War exists between Us and Bulgaria :

AND WHEREAS it is necessary to specify the articles which  
it is Our intention to treat as Contraband of War :

NOW, THEREFORE, We do hereby Declare, by and with the advice of Our Privy Council, that during the continuance of the War, or until We do give further public notice, the Proclamation issued on September 3rd, 1939, wherein were specified the articles which it is Our intention to treat as Contraband of War during the continuance of the War with Germany, shall be deemed to specify the articles which it is Our intention to treat as Contraband of War during the continuance of the War with Bulgaria.

Given at Our Court at Buckingham Palace, this Twenty-second day of January, in the year of Our Lord one thousand nine hundred and forty-two and in the Sixth year of Our Reign.

**GOD SAVE THE KING.**

[*Gazette of India*, 1942, Pt. I, p. 492.]

*Commerce Dept., No. 106 (7)-E. T. (A)/11-(2), dated the 2nd May, 1942.*—The following Proclamation by His Majesty is published for general information :—

**BY THE KING.**

#### **A Proclamation**

Specifying the Articles to be treated as Contraband of War in the war with Thailand.

**GEORGE, R. I.**

WHEREAS a state of War exists between Us and Thailand :

AND WHEREAS it is necessary to specify the articles which it is Our intention to treat as Contraband of War :

NOW, THEREFORE, We do hereby Declare, by and with the advice of Our Privy Council, that during the continuance of the War, or until We do give further public notice, the Proclamation issued on September 3rd, 1939, wherein were specified the articles which it is Our intention to treat as Contraband of War during the continuance of the War with Germany, shall be deemed to specify the articles which it is Our intention to treat as Contraband of War during the continuance of the War with Thailand.

Given at Our Court at Buckingham Palace, this Twenty-third day of February, in the year of Our Lord one thousand nine hundred and forty-two and in the sixth year of Our Reign.

**GOD SAVE THE KING.**

[*Gazette of India*, 1942, Pt. I, p. 790.]

*Home Dept., No. 6859, dated the 20th September, 1939.—*

The following Order of His Majesty in Council prescribing the Rules and Tables of Fees to be observed and taken in Prize Proceedings ("The Prize Court Rules, 1939") is published for general information :—

## PROVISIONAL RULES AND ORDERS, 1939.

### PRIZE COURTS.

ORDER IN COUNCIL, DATED SEPTEMBER 2ND, 1939, MADE UNDER SECTION 3 OF THE PRIZE COURTS ACT, 1864 (57 AND 58 VICTORIA, C. 39).

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At the Court at Buckingham Palace, the second day of September 1939.

#### PRESENT.

The King's Most Excellent Majesty in Council.

Whereas by section three of the Prize Courts Act, 1864,<sup>57 and 58 Vict., c. 39</sup> His Majesty in Council is authorised to make rules of court for regulating, subject to the provisions of the Naval Prize Act, 1864, and the said Act, the procedure and practice<sup>of prize courts within the meaning of the Naval Prize Act and the duties and conduct of the officers thereof and of the practitioners therein, and for regulating the fees to be taken by the officers of the courts and the costs, charges and expenses to be allowed to the practitioners therein :</sup>

And whereas by section five of the Naval Prize Act,<sup>57 and 58 Vict., c. 39</sup> 1864, it is provided that every appeal from a prize court within the meaning of that Act shall be made in such manner and form and subject to such regulations (including regulations as to fees, costs, charges and expenses) as may for the time being be directed by Order in Council :

And whereas it is expedient that the Prize Court Rules, 1914, as amended by Orders in Council, dated the 25th day of November, 1914, the 3rd day of February, 1915, the 29th day of April, 1915, and the 21st day of December, 1917, should cease to have effect except in the Union of South Africa and Eire :

And whereas by section one of the Prize Act, 1939,<sup>5 & 6 Geo. 6, c. 25</sup> it is provided that the law relating to prize shall apply in

relation to aircraft and goods carried therein as it applies in relation to ships and goods carried therein, and shall so apply notwithstanding that the aircraft is on or over land :

And whereas it is expedient that in the countries and territories hereinafter mentioned the rules set out in the Schedule hereto should come into force :

And whereas the Dominion of Canada has requested and consented to the making of this Order so far as the same extends thereto :

And whereas on account of urgency this Order should come into immediate operation :

Now, therefore, His Majesty by virtue of the powers in this behalf by the said Prize Courts Act, 1894, and the said 'Prize Act, 1939, or otherwise in Him vested, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows :—

57 & 58 Vict.,  
c. 34,  
2 & 3 Geo. 6,  
c. 65.

1. Forthwith upon the making of this Order :—

- (1) The Prize Court Rules, 1914, as amended by the Orders in Council, dated the 28th day of November, 1914, the 3rd day of February, 1915, the 29th day of April, 1915, and the 21st day of December, 1917, shall, except in their application to the Union of South Africa and Eire, be revoked.
- (2) The rules contained in the Schedule hereto shall come into force in the following countries and territories, that is to say,—
  - (a) the United Kingdom, the Channel Islands and the Isle of Man,
  - (b) the Commonwealth of Australia and the Dominion of New Zealand,
  - (c) British India and British Burma,
  - (d) Newfoundland and every colony,
  - (e) every British protectorate, and
  - (f) every territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Majesty, and is being exercised by His Majesty's Government in the United Kingdom, in the Commonwealth of Australia or in the Dominion of New Zealand.

and (to the extent of His Majesty's jurisdiction therein in matters of prize) in every other country or territory in which for the time being His Majesty has such jurisdiction.

2. This Order shall take effect provisionally in accordance with section two of the Rules Publication Act, 1893, from the date hereof.

RUPERT B. HOWORTH.

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## THE PRIZE COURT RULES.

### ORDER I.

#### *Interpretation.*

1. In these Rules and the forms thereto annexed, unless the context otherwise requires, the following expressions shall have and include the meanings hereby assigned to them, that is to say :—

“Captor” shall mean any person taking or seizing, or having taken or seized, any ship, aircraft or goods as prize, and shall (for the purposes of proceedings in any cause or matter) include the captor's solicitor (if any), or the proper officer of the Crown, and shall include re-captor ;

“Capture” shall include re-capture ;

“Cause” shall mean any prize proceeding instituted by a writ ;

“Claimant” shall mean any person who shall assert a claim to ship, aircraft or goods taken or seized as prize, or to compensation, and shall (for the purposes of proceedings in any cause or matter) include the claimant's solicitor (if any) ;

“Consular officer” shall include consul-general, consul, vice-consul, consular agent, and any person for the time being authorised to discharge the duties of consul-general, consul, or vice-consul ;

“Counsel” shall include any barrister-at-law, advocate or other person entitled to practise and have audience in the Court ;

“High Court” shall mean the High Court of Justice in England acting in the exercise of prize jurisdiction ;



"Court" shall mean the High Court and any Court in any of the following countries and territories, that is to say,—

(a) the Commonwealth of Australia and the Dominion of New Zealand,

(b) British India and British Burma,

(c) Newfoundland and any colony,

(d) any British protectorate,

(e) any territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Majesty, and is being exercised by His Majesty's Government in the United Kingdom, in the Commonwealth of Australia or in the Dominion of New Zealand, and

(f) any other country or territory in which for the time being His Majesty has jurisdiction in matters of prize,

being a Court for the time being duly authorised to exercise prize jurisdiction ;

"Crown" shall include the Crown in its office of Admiralty ;

"Defendant" shall (for the purposes of proceedings in any cause or matter) include the defendant's solicitor (if any) ;

"Judge" shall mean any Judge of the Court acting in the exercise of prize jurisdiction ;

"Lords of the Admiralty" shall mean the Lord High Admiral of the United Kingdom, or the Commissioners for executing the office of Lord High Admiral ;

"Marshal" shall mean the marshal of the Probate, Divorce, and Admiralty Division of the High Court, or of any Court other than the High Court, or such other officer as shall be appointed by the Court to carry out the duties of the marshal under these Rules ;

"Month" shall mean calendar month ;

"Owner" shall include any person to whom by operation of law the property in a ship or aircraft seized or taken as prize shall, in whole or part, have passed, and shall also include any person inter-

vening in a cause on behalf of an owner, or intervening and claiming or alleging an interest in such ship or aircraft ;

“ Party ” shall (for the purposes of proceedings in any cause or matter) include the proper officer of the Crown and the party's solicitor (if any) ;

“ Person ” shall include company and corporation and body politic ;

“ Petitioner ” shall (for the purposes of proceedings in any cause or matter) include the petitioner's solicitor (if any) ;

“ Plaintiff ” shall (for the purposes of proceedings in any cause or matter) include the plaintiff's solicitor (if any) ;

“ President ” shall mean the President of the Probate, Divorce, and Admiralty Division of the High Court, or the principal Judge of a Court other than the High Court as the case may be ;

“ Proper officer of the Crown ” shall mean His Majesty's Procurator-General or other law officer or agent for the Crown authorised to conduct prize proceedings on behalf of the Crown within the jurisdiction of the Court ;

“ Registrar ” shall mean the Admiralty Registrar of the Probate, Divorce, and Admiralty Division of the High Court, or any assistant or deputy Admiralty Registrar thereof, or the Admiralty Registrar of any Court other than the High Court, or such other officer as shall be appointed by the Court to carry out the duties of the Registrar under these Rules ;

“ Registry ” shall mean the Admiralty Registry of the Probate, Divorce, and Admiralty Division of the High Court, or of any Court other than the High Court ;

“ Respondent ” shall (for the purposes of proceedings in any cause or matter) include the respondent's solicitor (if any) ;

“ Ship of war ” shall include armed ship ;

“ Military aircraft ” shall include armed aircraft ;

“ Solicitor ” shall mean any solicitor, attorney, or proctor entitled to practise in the Court, and the proper officer of the Crown.

2. Unless the contrary intention appears, the provisions of these Rules relative to ships and aircraft shall extend and apply, *mutatis mutandis*, to goods and to freight (if any) due or to grow due ; and for such purpose the terms "ship" or "aircraft" when used in these Rules shall include "goods" and "freight".

3. Unless the contrary intention appears, words and expressions in these Rules shall have the same meaning as in the Prize Acts, 1864 to 1939, as amended by any subsequent enactment.

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## ORDER II.

### *Institution of Causes and Issue and Service of Writ.*

#### *(a) Institution of Causes.*

1. Every cause in matters of prize shall be instituted by a writ.

2. Causes shall be numbered in the order in which they are instituted, and the number given to any cause shall be the distinguishing number of the cause, and shall be written or printed on all instruments and other documents in the cause as part of the title thereof, and the cause shall be entered in the minute book under such number.

Forms of the heading and title of a cause will be found in Appendix A, No. 1 (i) and (ii).

3. Every cause instituted for the condemnation of a ship or aircraft as prize, including causes under Rule 6, shall, except as hereinafter provided, be instituted in the name of the Crown ; but the proceedings therein may, with the consent of the Crown (through the proper officer of the Crown), be conducted by the captors or any parties to whom the ship or aircraft would on condemnation be condemned as prize.

All other causes may be instituted in the name of the parties claiming or proceeding.

#### *(b) Issue of Writs.*

4. Writs shall be issued out of the Registry.

5. A writ for the condemnation of a ship or aircraft as prize shall be in the form No. 2 of Appendix A.

The writ shall be issued on the application of the proper officer of the Crown.

Unless the Judge shall otherwise order no writ for the condemnation of a ship or aircraft as prize shall be issued until an affidavit has been filed as to ship papers or aircraft papers.

6. Where the ship or aircraft has been destroyed or lost, or where goods have been destroyed or lost or removed from the ship or aircraft, the writ shall be in the form No. 3 of Appendix A.

7. In a cause instituted against a captor for restitution or damages, the writ shall be in the form No. 4 of Appendix A.

8. A cause instituted for the recovery of prize salvage (except where the ship or aircraft is brought in for adjudication) shall be commenced by writ in the form No. 5 of Appendix A.

9. In a cause instituted to enforce a claim of joint capture, the writ shall be in the form No. 6 of Appendix A.

*(c) Service of Writs.*

10. In a cause for the condemnation of a ship or aircraft as prize, the writ shall be served by the marshal.

11. Service of the writ shall be effected in the manner following:—

(1) upon ship or aircraft, freight or goods on board, by affixing the original writ for a short time on a conspicuous part of the ship or aircraft, and by leaving a true copy fixed in its place when the original is removed;

(2) upon goods or freight where the goods have been landed or transhipped or are not on board a ship or aircraft, by attaching the writ for a short time to such goods, and by leaving a copy of the writ attached thereto; or, if the person having the custody of the goods refuses access thereto, by showing the writ to such person and by leaving with him a copy thereof;

(3) upon freight or proceeds of prize in the hands of any person other than a person holding the same on behalf of the court, by showing the writ to him, and by leaving with him a copy thereof;

(4) upon freight or proceeds in court, by showing the writ to the Registrar and by leaving with him a copy thereof.

12. The writ shall be filed by the party after service as aforesaid, with a certificate of service under the seal of the court. The certificate of service shall state the date and mode

of service, and shall be signed by the person serving the same, and shall be taken as evidence of such service and of the date and mode thereof.

13. Service of a writ in a cause instituted as in Rule 6 mentioned, shall be effected by the writ being filed in the Registry by the captor, and notice of the institution of the cause shall be given in such manner as the Judge may direct.

14. In a cause instituted as in Rule 7 and Rule 8 mentioned, the writ shall be served on the captors.

15. If it is made to appear to the Judge that service in the manner prescribed by these Rules is impracticable or cannot for any reason promptly be effected, the Judge may make such order for substituted or other service, or for the substitution for service of notice by advertisement or otherwise as may seem just. Every application for substituted service or for the substitution of notice for service shall be supported by an affidavit setting forth the grounds upon which the application is made.

*(d) Service out of the Jurisdiction.*

16. Service of a writ may, by leave of the Judge, be allowed out of the jurisdiction.

17. Application for leave to serve a writ out of the jurisdiction shall be upon affidavit, stating that in the belief of the deponent the applicant has good cause for proceeding, and showing in what place or country the person, ship or aircraft to be served is or probably may be found, and the grounds upon which the application is made.

18. An order giving leave to effect service out of the jurisdiction shall limit a time after each service within which an appearance shall be entered.

19. Where the person to be served out of the jurisdiction is not a British subject, or the ship or aircraft is not the property of a British subject, notice of the writ and not the writ itself shall be served. Notice in lieu of service shall be served in the manner in which a notice of a writ of summons is served according to the procedure for the time being in force in the High Court. A form of notice in lieu of service will be found in Appendix A, No. 7.

20. Where under the practice of the High Court notice of a writ is served through the diplomatic channel, the notice shall, if the writ is issued by the High Court, be transmitted to the Secretary of State for Foreign Affairs in accordance with such practice, and, if the writ is issued by

a Court other than the High Court, be transmitted to the chief executive authority with a request for the further transmission of the same through the appropriate channel to the Government of the country in which service is to be effected.

(e) *General.*

21. A writ for condemnation and the fact of service thereof shall be advertised by the Registrar forthwith in one or more of such newspapers and on one or more occasions as he shall think proper.

22. Where a writ is issued on the application of an alien enemy an affidavit shortly stating the grounds of the claim must be filed in the Registry before the writ is issued.

23. Where a writ is issued in respect of a ship or aircraft purporting to be neutral, notice of the institution of the cause shall be sent by the Registrar to the consular officer of the State to which the ship or aircraft purports to belong.

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ORDER III.

*Appearance and Claim.*

1. Subject to the provisions of Rule 18 of Order II any person desiring to enter an appearance in a cause shall enter an appearance (Appendix A, form No. 8) in the Registry within thirty days after service of the writ, or may by leave of the Court do so at any time before final adjudication. He shall thereupon become a party to the cause.

2. A person, on entering an appearance, shall give notice thereof to the party issuing the writ.

3. Where a person has no usual residence or place of business within the jurisdiction, appearance may be entered for him by the master of the ship or aircraft or by an agent duly authorised.

4. A party who has entered an appearance may make a claim in one of the forms marked No. 9 (i) to (vii) in Appendix A, with such variations as the circumstances may require.

file 5. An alien enemy shall, before entering an appearance, in the Registry an affidavit stating the grounds of his claim.

6. Where no appearance has been entered the party issuing the writ may proceed in the cause subject to the filing of an affidavit of service of the writ. See Appendix A, Form No. 10.

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#### ORDER IV.

##### *Affidavit as to Ship Papers and Aircraft Papers.*

1. An affidavit as to ship papers or aircraft papers shall, unless previously sworn, or otherwise ordered by the Judge, be sworn within ten days after the ship or aircraft is brought in for adjudication or is seized within the jurisdiction.

2. The affidavit shall, with the ship papers or aircraft papers exhibited thereto, be filed in the Registry within three days or such longer period as the Judge may order, after the same is sworn as aforesaid, or, if sworn before the ship or aircraft is brought in for adjudication, within the like period after the ship or aircraft is brought in for adjudication.

3. If a captured ship or aircraft is destroyed or lost, the affidavit as to ship papers or aircraft papers shall, with the ship papers or aircraft papers exhibited thereto, be filed within three days of the institution of the cause.

4. Where ship papers or aircraft papers are in the custody or under the control of any person within the jurisdiction of the Court, the Judge may, on the application of the captor or of a claimant, order the person having such custody or control to bring the papers into Court; and thereupon such person shall bring in all ship papers or aircraft papers as exhibits to an affidavit in the form marked No. 11 (iv.) in Appendix A.

5. The ship papers or aircraft papers shall be exhibited to the affidavit and shall be numbered consecutively; and the person before whom the affidavit is sworn shall initial each of the documents.

6. Every affidavit as to ship papers or aircraft papers shall be sworn before a commissioner appointed to administer oaths, or before any other person lawfully authorized to administer oaths in prize matters, or before the Registrar. The person in charge of the ship or aircraft, or a person desiring to make an affidavit shall produce to the person before whom the affidavit is sworn all the ship papers or aircraft papers (if any) delivered up or found on board the ship or aircraft.

7. Where ship papers or aircraft papers are delivered up or found in ordinary course at the time of capture, the affidavit as to ship papers or aircraft papers shall be in the form marked No. 11 (i) in Appendix A.

Where any ship papers or aircraft papers have, after being delivered up or found, been lost, mislaid, injured or altered, or where any ship papers or aircraft papers are found hidden or concealed, the affidavit shall be in the form marked No. 11 (ii) in Appendix A, with such variations as the facts may require.

Where no ship papers or aircraft papers are delivered up or found on board the ship, the affidavit shall be in the form marked No. 11 (iii) in Appendix A.

Provided that no affidavit shall be invalidated by reason only of a defect in form.

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## ORDER V.

### *Proceedings in case of failure to proceed by Captors.*

1. Where a ship or aircraft has been and still remains detained, whether captured as prize or not, and no cause is instituted against it within one month from the time it is so taken or seized, a claimant may, after issuing a writ as provided by Order II, apply for an order for the release of the ship or aircraft and its restoration to him, and the Judge upon such application may make such order as to the restoration of the ship or aircraft and as to damages or costs or as to proceeding to judgment as he may think fit.

2. Where a ship or aircraft has been captured as prize, but has been subsequently released by the captors, or has, by loss, destruction, or otherwise, ceased to be detained by them without proceedings for condemnation having been taken, any person interested in the ship or aircraft wishing to make a claim for costs and damages in respect thereof, shall issue a writ as provided by Order II.

3. Where, after a cause has been instituted, the captors fail to take any of the steps within the respective times provided by these Rules, or, in the opinion of the Judge, fail to prosecute with effect the proceedings for adjudication, the Judge may, upon the application of a claimant who has entered an appearance as provided by Order III, order the ship or aircraft to be released and to be restored to the claimant, and may make such order as to damages or costs as he may think fit.



4. Any person interested in a ship or aircraft may, without issuing a writ, under the circumstances stated in Rule 1, provided he does not intend to make a claim for restitution or damages, apply by summons for an order that the captors proceed to adjudication, and the Judge, may, on the hearing of such summons, order the captors to proceed to adjudication or make such other order as he may think fit.

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## ORDER VI.

### *Discontinuance.*

Proceedings may be discontinued by leave of the Judge, and not otherwise; such discontinuance may be in respect of all or any part of the subject matter of the cause. No order for discontinuance shall be made or taken to prejudice the right (if any) of a claimant to costs and damages. Notice of discontinuance (Appendix A, Form No. 12) shall be served on the other parties.

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## ORDER VII.

### *Pleadings.*

1. In any cause, the Judge may, on the application of any party by summons, order such pleadings to be delivered as he may think fit.

2. A pleading shall be divided into short paragraphs numbered consecutively which shall state concisely the facts, and the effect of the documents, if any, on which the party relies, and shall be signed by the party or his solicitor or counsel.

3. A pleading may at any time be amended by consent of the parties, or by order of the Judge. If a party unreasonably refuses to give his consent he shall be liable to be condemned in the costs occasioned by such refusal.

4. A party may apply to the Judge to decide before the trial of the cause any question of law raised by any pleading, and the Judge shall thereupon make such order as he shall think fit.

5. Any person becoming a party after the filing of a petition shall, after making a claim, or by leave of the

Judge, be entitled to a copy of the petition, and shall within seven days of the receipt thereof plead thereto as in Rules 1 and 2 stated.

Forms of pleadings will be found in Appendix A, No. 13 (i) to (iv).

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## ORDER VIII.

### *Particulars.*

In any cause the Judge may, on the application of any party by summons, order particulars in writing of any allegation contained in any pleading or other document to be delivered by a party upon such terms as he may think just.

Forms of order and of particulars will be found in Appendix A, Nos. 14 and 15.

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## ORDER IX.

### *Discovery, Inspection, and Admission of Documents and Facts.*

1. Any party to a cause or matter may apply to the Judge for an order directing any party other than the proper officer of the Crown to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein, and the Judge shall make such order, either generally or limited to certain classes of documents, as he may think fit. Provided that discovery shall not be ordered unless the Judge shall be of opinion that it is necessary either for disposing fairly of the cause or for saving costs.

2. The affidavit, to be made by any person against whom an order for discovery of documents has been made under Rule 1, shall specify which, if any, of the documents therein mentioned he objects to produce and it shall be in the Form No. 16 of Appendix A with such variations as circumstances may require.

3. On the hearing of any application for discovery of documents the Judge in lieu of ordering an affidavit of documents to be filed may order that the party from whom discovery is sought shall deliver to the other parties a list of the documents which are or have been in his possession, custody or power relating to the matters in question. Such

list shall as nearly as may be follow the form of the affidavit in the Form No. 16 of Appendix A. Provided that the ordering of such list shall not preclude the Judge from afterwards ordering the party to make and file an affidavit of documents.

4. Any party to a cause may, for the purposes of the hearing of a cause, serve a notice (Appendix A, Form No. 17) on any other party to produce, for inspection or for the purpose of being copied, any document in his possession or power relating to any matter in question in the cause.

5. If the party served with notice to produce omits or refuses to do so within the time specified in the notice, the adverse party may apply to the Judge for an order to produce, and the Judge may, if he thinks fit, make such order.

6. Notice to produce documents at the hearing or at an examination of witnesses shall be in the Form No. 18 of Appendix A, with such variations as the circumstances may require.

7. Any party who has entered a claim, or, by leave of the Judge, any other party may inspect in the Registry and take copies of the ship papers or aircraft papers filed in the cause.

8. A party may, for the purposes of any hearing of a cause, serve a notice (Appendix A, Form No. 19) on any other party to admit any document or fact, saving all just exceptions, and a party not admitting it after such notice shall be liable for the costs of proving the document or fact; unless at the hearing the Judge shall certify that the refusal or omission to admit was reasonable.

Form of admission of facts will be found in Appendix A, No. 20.

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## ORDER X.

### *Arrest of Prize.—Warrant.*

1. Where a ship or aircraft is taken as prize and brought within the jurisdiction of the Court, or seized as prize within such jurisdiction or having been taken or seized as prize comes or is howsoever within the jurisdiction of the Court, but is not delivered up to the marshal of the Court, the Judge may, after claim made, and upon the application of the claimant, order a warrant for the arrest of the ship or aircraft to be issued.

2. Where, in any proceeding, it shall be made to appear to the Judge by the Crown or any party to a cause other than a claimant that property taken or seized as prize is within the jurisdiction of the Court, and that it is necessary or desirable that such property should be within the custody of the Court, the Judge may, on the application of the Crown or such party, order a warrant for the arrest of such property to be issued.

3. A warrant (Appendix A, Form No. 21) for the arrest of property shall be issued only on the order of the Judge.

No warrant shall be issued for the arrest of property until an affidavit has been filed by the party applying for the warrant as hereinafter prescribed.

4. The affidavit shall state the grounds upon which the application is made and that the aid of the Court is required. Form of affidavit to lead warrant will be found in Appendix A, No. 22.

5. The warrant shall be issued out of the Registry, and lodged by the party applying for the same with the marshal, and it shall be served by the marshal in the like manner as writs are by Rule 11 of Order II directed to be served and the provisions of Rule 15 of that Order shall apply to warrants as they apply to writs.

A warrant served as provided in paragraph (3) of Rule 11 of Order II shall be deemed to be an order for payment into Court forthwith of the freight or proceeds in respect of which the warrant is issued: Provided that, instead of such warrant, the Judge may, if he sees fit, order the person holding or having received such freight or proceeds to pay the same into Court.

6. In urgent cases, the marshal may, after a warrant is placed in his hands for execution, authorise his substitute by telegram or telephone to detain such property until the service of the warrant can be duly effected as herein provided.

7. Warrants may be served on any day, including Sunday and any public holiday.

8. Warrants shall be filed by the marshal within one week after service thereof has been completed, with a certificate of service endorsed thereon.

9. This Order shall not apply to ships of war or military aircraft.

## ORDER XI.

*Sale, Appraisement, Safe Custody and Inspection of Prize.*

1. The Judge may, at any time on the application of the marshal or any party, make such order as to the removal, safe custody or preservation of a ship or aircraft as he may think fit, and may at any time order the ship or aircraft to be appraised, if not already appraised, and sold.

2. The appraisement and sale of a ship or aircraft, the removal and survey thereof, and the unloading and warehousing of goods shall be effected by the marshal under the authority of a commission.

Forms of commission and (for the case of a ship) bills of sale by the marshal will be found in Appendix A, Nos. 23 and 25. In the case of an aircraft the contract of sale shall be in such terms as the Judge shall direct.

3. Where a ship or aircraft is ordered to be sold, such sale shall be by public auction unless the Judge shall for good cause otherwise order, and the gross proceeds thereof shall be paid into Court by the marshal.

Form showing conditions of sale usual in the case of a ship will be found in Appendix A, No. 26. In the case of an aircraft the conditions of sale shall be in such terms as the Judge shall direct.

4. Where the Judge orders any act or acts in Rule 2 mentioned to be done, the party who has obtained the order shall thereupon obtain out of the Registry a commission and shall lodge the same with the marshal for execution.

5. Every commission issued under Rule 2 shall, as soon as possible after its execution, be filed in the Registry by the marshal with a return, setting forth the manner in which it has been executed. The marshal shall, with the commission, file his accounts and the vouchers in support thereof.

Forms of marshal's certificate and accounts will be found in Appendix A, Nos. 24 and 27.

6. The Registrar shall on the application of any party review the marshal's accounts, and shall report the amount which he considers should be allowed; and any party to the cause may be heard before the Registrar on the review.

7. The Judge on the application of any party by summons may review the Registrar's decision.

8. The amount found due to the marshal shall be paid out to him on an order signed by the Judge.

9. All costs and expenses of and incidental to orders issued under Rule 2 shall in the first instance be borne and paid by the party on whose application the order is issued.

10. Where the Judge directs that goods be unladen, inventoried, and warehoused, they shall, unless the Judge otherwise orders, remain in the custody of the marshal until sale or restitution thereof.

11. The Judge may, if he thinks fit, upon the application of any party to a cause, order any property under the arrest of the Court or being the subject matter of a cause to be inspected by any party thereto or by any person appointed by the Court.

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## ORDER XII.

### *Bail.*

1. No property in the custody of the Court shall be released on bail or on payment into Court in lieu of bail except by order of the Judge or Registrar.

2. An application for release shall be made in chambers by summons (Appendix A, Form No. 48).

3. The amount of the bail or the amount to be paid into Court in lieu of bail as the case may be shall be the full value of the property sought to be released, and unless agreed such value shall be ascertained by appraisement or in such other manner as the Judge or Registrar shall direct.

4. Bail shall be given by filing a bail bond, which shall be signed by two sureties, unless the Judge or Registrar shall order that one surety shall suffice, and it shall be taken before a commissioner authorized to administer oaths in the Court in the exercise of its ordinary jurisdiction, or before the Registrar, or by his direction before a clerk in the Registry, and in every case the sureties shall justify by affidavit.

Forms of bail bond and of affidavit of justification will be found in Appendix A, Nos. 28 and 29.

5. A bail bond shall not, unless by consent, be filed until after the expiration of twenty-four hours from the time when a notice (Appendix A, Form No. 30) containing the names and addresses of the sureties and of the commissioner before whom the bail was taken shall have been served upon the adverse solicitor, and a copy of the notice verified by affidavit shall be filed with the bail bond.

6. No commissioner shall take bail on behalf of any person for whom he or any person in partnership with him is acting as solicitor or agent.

7. A commission or fee paid to a person becoming surety to a bail bond or otherwise giving security may be recovered on taxation, provided that the amount of such commission or fee shall not in the aggregate exceed one pound per centum on the amount in which bail is given.

8. If the adverse party is not satisfied with the sufficiency of a surety, he may file a notice of objection to such surety (Appendix A, Form No. 31). The surety shall thereupon be produced for cross-examination on his affidavit before the Registrar, who shall report on his sufficiency. If the Registrar reports against the sufficiency of the surety, a new bail bond shall be prepared.

9. Where bail is given in a cause for condemnation it shall be deemed to be given and to be answerable not merely to the actual captors, but to all parties having any rights in or against the property, including the Crown, and in respect of the decree of the Court or of any Court authorised to hear appeals therefrom.

10. Every party filing a bail bond shall at the time of filing the same deliver to the Registrar a copy thereof. The Registrar shall keep every such copy in a register (to be called the Register of Bail Bonds) which may be inspected by any person at any time when the Registry is open.

11. Whenever by an order of the Judge bail is ordered to be estreated the proper officer of the Crown shall, unless the order otherwise directs, take all necessary steps to effect such estreatment and for that purpose the marshal shall on receipt of a written application so to do produce the bail bond to the Court or to such officer of the Court as may be required by the proper officer of the Crown.

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### ORDER XIII.

#### *Releases.*

1. Property in the custody of the Court whether under arrest or otherwise shall only be released under the authority of an instrument issued from the Registry (Appendix A, Form No. 32) to be called a release.

2. A release shall be issued at any time before adjudication upon the application of the proper officer of the Crown.

3. A release may be issued at any time upon the order of the Judge.

4. A release may (unless there is a caveat outstanding against the release of the property) be issued in the following cases upon the order of the Registrar :—

- (a) upon a consent (conditional or otherwise) being filed by the proper officer of the Crown,
- (b) where proceedings instituted by or on behalf of the Crown are discontinued,
- (c) where property has been ordered to be released on bail and bail has been given in accordance with such order,
- (d) where in proceedings for the recovery of prize salvage the parties claiming salvage discontinue their proceedings,
- (e) where in proceedings for the recovery of prize salvage bail or other satisfactory security has been given for the amount of salvage claimed and costs.

5. No release shall affect the right (if any) of the owners of the property captured to costs and damages against the captor or the proper officer of the Crown unless so ordered by the Judge.

6. Where property has been arrested for prize salvage the release shall not be issued under the foregoing Rules, except on discontinuance of the proceedings or dismissal of the claim, until the value of the property arrested has been agreed upon between the parties or ascertained as by these Rules provided, unless the Judge shall otherwise order.

7. The release shall be lodged with the marshal by the party upon whose application it has been made and thereupon, upon the marshal being satisfied that the conditions (if any) imposed by the release have been fulfilled and upon payment to him of all fees due to and charges incurred by him or on his behalf in respect of the property, unless the release shall otherwise direct, the property shall be at once released.

8. Upon the property being released the marshal shall file a certificate (Appendix A, Form No. 33) recording such release and the date upon which it was effected indicating therein whether the release was absolute or only on bail and, if on bail, the amount of such bail.

9. This Order shall not apply to releases on requisition.



## ORDER XIV.

*Caveats.*

1. Any person having any interest in or claim against any property in the custody of the Court, and desiring to prevent its release, shall file a notice in the Registry, and thereupon the Registrar shall enter a caveat in the caveat release book. Forms of notice and of caveat release will be found in Appendix A, Nos. 34 and 35.

2. Any person having any interest in or claim against any money in Court, and desiring to prevent its payment out of Court shall file a notice in the Registry, and thereupon the Registrar shall enter a caveat in the caveat payment book. Forms of notice and of caveat payment will be found in Appendix A, Nos. 36 and 37.

3. If the person entering a caveat is not party to the cause, the notice shall state his name and address, and an address within three miles of the Registry at which it shall be sufficient to leave all documents required to be served upon him, and such person shall within seven days of the entry of the caveat enter an appearance in the cause, otherwise the caveat will cease to be effective.

4. The party at whose instance a caveat release or caveat payment is entered shall be condemned in all costs and damages occasioned thereby, unless he shall show to the satisfaction of the Judge good and sufficient reason for such entry.

5. Where a ship or aircraft is subject to a claim for prize salvage but is not under arrest, any person desiring to prevent the arrest of such ship or aircraft may file a notice in the Registry undertaking to enter an appearance in any cause for the recovery of prize salvage that may have been or may be instituted against such ship or aircraft, and to give bail in such cause in a sum not exceeding an amount to be stated in the notice, or to pay such sum into the Registry; and a caveat against the issue of a warrant for the arrest of the ship or aircraft shall thereupon be entered in the caveat warrant book.

Forms of notice and of caveat warrant will be found marked Nos. 38 and 39 respectively, in Appendix A.

6. A party taking proceedings for prize salvage against a ship or aircraft, in respect of which a caveat has been entered in the caveat warrant book, shall forthwith serve a copy of the writ instituting the proceedings upon the party on whose behalf the caveat has been entered, and within three days of the service of the copy of the writ the

party on whose behalf the caveat has been entered shall, if the sum claimed does not exceed the amount for which he has undertaken, give bail in such sum or pay the same into the Registry.

7. If the party on whose behalf the caveat has been entered shall not within the three days prescribed by Rule 6 have given bail in such sum or paid the same into the Registry, the caveat may be over-ruled.

8. The entry of a caveat warrant shall not prevent the issue of a warrant for the arrest of any property but a party at whose instance a warrant shall be issued for the arrest of any property in respect of which there is a caveat warrant outstanding shall be condemned in all costs and damages occasioned thereby, unless he shall show to the satisfaction of the Judge good and sufficient reason for such issue.

9. A caveat shall not remain in force for more than six months from the date of entering the same.

10. A caveat may at any time be withdrawn by the person at whose instance it has been entered, on his filing a notice withdrawing it. A form of notice of withdrawal will be found in Appendix A, No. 40.

11. The Judge may over-rule any caveat.

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## ORDER XV.

### *Evidence and Hearing.*

1. A cause for the condemnation of a ship of war or a military aircraft shall be heard upon the affidavit as to ship papers or aircraft papers, and the ship papers or aircraft papers, if any, exhibited thereto, either alone or upon such other evidence as the Judge may direct.

2. A cause for the condemnation of a ship or aircraft other than a ship of war or a military aircraft shall be heard upon the following evidence, namely:—

- (a) the affidavit as to ship papers or aircraft papers, and the ship papers or aircraft papers, if any, exhibited thereto;
- (b) the affidavits of the officers of the ship or aircraft concerned in the capture;
- (c) the depositions of the witnesses, if any, examined before the hearing, whether such witnesses belong to the captured ship or aircraft or are

tendered on behalf of the captors or of any other party ;

(d) the evidence given at the hearing of any witnesses, whether on behalf of the captors or of any other party ; and

(e) such further evidence, if any, as may be admitted by the Judge.

3. The Judge may in any cause where it shall appear necessary for the purposes of justice make an order for the examination upon oath before the Judge or any officer of the Court or any other person, and at any place, of any witness or person, and may empower any party to any such cause to give such deposition in evidence therein on such terms, if any, as the Judge may direct.

4. The Judge may make such order as he shall think fit as to the hearing of the cause, the bringing in of claims, pleadings, discovery by interrogatories, discovery and inspection of documents or as to any other matter upon such terms as the nature of the case may require.

5. Where in any cause whether for condemnation or otherwise claims have been made by two or more parties, the Judge may, on the application of any party, make an order for the hearing of one or some of such claims in priority to the other or others. Upon such hearing the Judge may make such decree or order as he might have made if no other claims had been made, but he may if he thinks fit order the stay of any proceedings consequent thereon until the hearing of the other claim or claims is completed.

6. Where any two or more causes whether for condemnation or otherwise are pending the Judge may on the application of any party to any of such causes order that they or such of them as may be specified in the order be consolidated.

7. After a day has been fixed for the hearing of a cause the Registrar shall send notice to all parties that the cause will be heard on the appointed day.

8. At the hearing of a cause the party by whom it has been instituted shall begin, unless the Judge shall otherwise order. If there are several claimants the Judge shall direct which of them shall begin. At the hearing of claims on joint capture the persons claiming to be joint captors shall begin.

9. No ship or aircraft shall be condemned at the hearing in the absence of an appearance or claim until six months have elapsed from the service of the writ, which shall be

verified by an affidavit of service (Appendix A, Form No. 10), unless there be on the ship papers or aircraft papers, and on the evidence, if any, of the witnesses from the captured ship or aircraft, sufficient proof that such ship or aircraft belongs to the enemy, or is otherwise liable to condemnation.

10. Any party in any cause may by leave of the Judge at the hearing invoke and give in evidence the ship papers or aircraft papers brought in and filed in any other cause.

11. If a witness is out of the jurisdiction of the Court, the Judge may order that he shall be examined before an examiner specially appointed for the purpose, or may order, in lieu of a commission, the issue of a request to examine such witness.

Forms of a commission to examine witnesses, and of a request, and of a return to a commission to examine witnesses, will be found in Appendix A, Nos. 41, 42 and 43.

12. The evidence of every witness taken before the hearing shall be taken down in writing by the Judge, Registrar, or examiner, before whom such witness is examined, or by a shorthand writer, appointed by the Judge, Registrar or examiner, or agreed upon by the parties, and such written evidence, or a transcript of the shorthand writer's notes, shall be certified as correct by the Judge, Registrar, examiner, or shorthand writer.

13. The certified evidence taken before the hearing shall be lodged in the Registry by the party on whose behalf the witness has been examined, or, if taken out of the jurisdiction of the Court, shall forthwith be transmitted by the examiner to the Registry, together with his commission.

14. As soon as the evidence taken before the hearing has been filed or received in the Registry, it may be used as evidence in the cause, saving all just exceptions.

15. When evidence is given at the hearing by the oral examination of witnesses such evidence may be taken by a shorthand writer appointed by the Judge and a transcript of the shorthand writer's notes, certified by him to be correct, shall be admitted to prove the oral evidence of a witness.

16. Any examination of a witness may be adjourned, if necessary, from time to time, and from place to place, as the Judge, Registrar, or examiner before whom such examination is taken shall direct.

17. The Judge may order any person within the jurisdiction of the Court who has made an affidavit in a cause to attend for cross-examination thereon before the Judge.

18. Where witnesses are examined orally, whether before the Judge, the Registrar, or an examiner, the parties, their counsel, solicitors, or agents may attend the examination, and the witnesses shall be examined, cross-examined, and re-examined in such order as the Judge, Registrar, or examiner may direct; and questions may be put to any witness by the Judge, Registrar, or examiner as the case may be.

19. The Judge may disallow any questions put in cross-examination of any party or witness which may appear to him to be vexatious or not relevant to any matter proper to be inquired into in the cause.

20. Any person wilfully disobeying any order or subpoena requiring his attendance for the purpose of being examined, or cross-examined, or producing any document, or, on attending, refusing to answer any proper question, shall be deemed guilty of contempt of Court and may be dealt with accordingly.

21. Where any ship papers, aircraft papers or other documents have to be translated for use in a cause, such translation shall be made by an interpreter, appointed by the party who desires to use such translation, or, if necessary, by a person appointed for the purpose by the Judge. The parties to any proceeding may agree, or, if there is no party other than the Crown or the captor, the proper officer of the Crown may direct, which and what parts, if any, of the ship papers or aircraft papers and documents shall be translated.

22. Notwithstanding anything contained in these Rules the proper officer of the Crown may apply to the Judge for leave to administer interrogatories for the examination of any person whether a party to the cause or not.

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## ORDER XVI.

### *Assessors.*

One or more Trinity Masters or other assessors may, on the application of any party, or without such application if the Judge sees fit, be called in to advise the Court upon any matters requiring nautical or other professional knowledge. Such application shall be made by letter or notice lodged in the Registry six days at least before the attendance of the Trinity Masters or other assessors is required.

The fees of the Trinity Masters or other assessors shall be paid in the first instance by the party on whose demand they are summoned.

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## ORDER XVII.

### *References.*

1. The Judge may refer the assessment of damages, the taking of any accounts, or any other matter which he may think fit, to the Registrar either alone or assisted by one or more merchants or other assessors.

2. Within twenty-one days from the day when the order for the reference is made, or an agreement for a reference is filed, the claimant shall file the claim and vouchers and affidavits, if any, and serve copies on the opposite party.

3. The claimant shall, after the filing of the claim and vouchers, obtain a day for the reference either by summons or by agreement, and when such day has been obtained he shall lodge in the Registry a notice praying to have the reference placed in the list for hearing with the stamps for the reference affixed thereto.

4. At the time appointed for the reference, if any party be present, the reference may be proceeded with, but the Registrar may adjourn the reference from time to time, as he may deem proper.

5. Evidence may be given  *viva voce*  or by affidavit or by documents, and the evidence shall, on the application of either party, but at the expense in the first instance of the party on whose behalf the application is made, be taken down by a shorthand writer appointed by the Court, and a transcript of the shorthand writer's notes, certified by him to be correct, shall be admitted to prove the oral evidence of the witnesses on an objection to the Registrar's report.

6. When a reference has been heard, the Registrar shall draw up a report in writing of the result of the reference, showing any further particulars and reasons that may be necessary. The Registrar shall report whether any and what part of the costs of the reference should be allowed and to whom.

The report shall be in the Form No. 11 of Appendix A, or in such other form as the circumstances of the case may require.

7. The claimant who has received notice from the Registry that the report is ready shall, within six days from the time when he has received such notice, file the report and serve a notice of such filing on the opposite party, and shall forthwith apply for an order (Appendix A, Form No. 45) confirming the report.

8. If the claimant shall not take the steps prescribed in the last preceding Rule, the adverse party may take up and file the report, and apply for its confirmation, or may apply to the Judge to have the claim dismissed.

9. A party intending to object to the Registrar's report shall, within fourteen days from the filing of the report, file in the Registry a notice (Appendix A, Form No. 46) that he objects to the report, and a copy thereof shall be served on the adverse party.

10. An objection to a report shall be brought before the Judge by motion, or on pleadings consisting of a petition in objection to the report and an answer thereto. A notice of motion in objection to a report shall be filed within ten days from the filing of the notice of objection and a copy shall be served on the adverse party, and a petition shall be filed within the same period, and a copy served on the adverse party, and the answer thereto shall be filed within ten days from the service of the petition, and a copy served on the adverse party.

Forms of notice of motion and of pleadings respectively will be found in Appendix A, Nos. 47 and 13 (iv).

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## ORDER XVIII.

### *Costs and Security for Costs.*

1. The costs of and incident to all causes shall, except when otherwise provided by any agreement, or by statute, be in the discretion of the Judge.

2. Any person instituting a cause, other than a cause for condemnation, or making a claim, and being ordinarily resident out of the jurisdiction of the Court, may be ordered to give security for costs, though he may be temporarily resident within the jurisdiction of the Court, and the proceedings may be stayed until such security is given.

3. In any cause in which security for costs is required, the security shall be of such amount, and be given at such times and in such manner or form, as by bond, payment into Court or otherwise, as the Judge shall direct.

## ORDER XIX.

### *Taxation of Costs.*

1. A party desiring to have a bill of costs taxed either between party and party or between solicitor and client, shall file the bill in the Registry.

2. In all cases of taxation the Registrar shall be the taxing officer and the taxation shall proceed, in the High Court in accordance with the law and practice governing the taxation of costs in the High Court in the exercise of its Admiralty jurisdiction, or, in a Court other than the High Court, in accordance with the law and practice governing the taxation of costs in such Court in the exercise of its ordinary jurisdiction.

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## ORDER XX.

### *Interlocutory Applications.*

1. Any application to the Judge at any time other than at the hearing of a cause shall, if made in Court, be made by motion, or, if made in chambers, by summons (Appendix A, Form No. 48).

2. Every application to the Judge other than applications which are by these Rules directed to be made by motion, may be made in chambers by summons, but a summons may be adjourned by the Judge into Court.

3. Every notice of motion (Appendix A, Form No. 47) or summons shall be served upon the adverse party at least 24 hours before the date of the return thereof, unless by consent of the adverse party, or by order of the Judge, the time for such service is shortened.

4. Every notice of motion or summons shall state the nature of the order desired, and the day on which the application is to be made.

5. When the motion or summons comes on for hearing the Judge may, after hearing the parties, or in the absence of any of them, on proof that the notice of motion or summons has been duly served, make such order as he shall deem right.

6. Save as hereinafter provided, no motion or summons shall be heard without previous notice to or service on the parties affected thereby, but the Judge, if satisfied that the delay caused by proceeding in the ordinary way would, or might, entail irreparable or serious mischief, may make any order *ex parte* upon such terms as to costs or otherwise,



and subject to such undertaking, if any, as the Judge may think just ; and any party affected by such order may move to set it aside.

7. Any application made in chambers *ex parte* shall, if the Judge thinks fit so to require, be made by summons.

8. The Registrar may transact all such business and exercise all such authority and jurisdiction in respect of the same as under these Rules may be transacted or exercised by the Judge in chambers, except in respect of the following proceedings and matters, that is to say,—

(1) all matters relating to the liberty of the subject or attachments ;

(2) awarding of costs other than the costs of or relating to any proceeding before the Registrar and costs which, by these Rules or by the order of the Judge, the Registrar is authorised to award :

Provided that the Registrar shall only transact such business and exercise such authority and jurisdiction where he has power to transact the like business and exercise the like authority and jurisdiction in matters arising out of the ordinary jurisdiction of the Court :

Provided, further, that any application in chambers may, if required by any party thereto, be heard by the Judge.

9. Any party affected by any order or decision of the Registrar may appeal to the Judge by summons, and such appeal shall be made within three days after the order appealed from.

10. The Judge may on due cause shown vary or rescind any order or decision previously made on motion or summons other than an order made in Court on an appeal from chambers.

11. An appeal from the decision of the Registrar in chambers shall be no stay of proceedings unless so ordered by the Judge or Registrar.

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## ORDER XXI.

### *Affidavits.*

1. Every affidavit shall be intituled in the cause or matter in which it is sworn, or, if sworn before the commencement of a cause, it shall be headed with the name

of the captured ship or, in the case of an aircraft, with the word "Aircraft" followed by the nationality and registration marks of the captured aircraft, and shall be divided into short paragraphs numbered consecutively, and shall be in the first person, and signed by the deponent.

2. The name, address, and description of every person making an affidavit shall be inserted therein.

Where an affidavit is made by two or more persons, the names of all such persons, and the dates when, and the places where, it is sworn, shall be inserted in the jurat.

Form of heading and jurat to an affidavit will be found in Appendix A, No. 49.

3. When an affidavit is made by any person who is blind, or who, from his signature, or otherwise, appears to be illiterate, the person before whom the affidavit is sworn shall certify that the affidavit was read over to the deponent, and that the deponent appeared to understand the same, and made his mark or wrote his signature thereto in the presence of the person before whom the affidavit was sworn.

4. When an affidavit is made by a person who does not speak the English language, the affidavit shall be taken down and read over to the deponent by interpretation of a person previously sworn faithfully to interpret the affidavit.

5. Affidavits sworn within the jurisdiction shall be sworn before the Judge, Registrar, commissioner, or officer empowered under these Rules to administer oaths.

6. Affidavits sworn out of the jurisdiction may be sworn before the following persons :—

- (1) If sworn in any place being a part of His Majesty's dominions, before any person authorised to administer oaths in such place.
- (2) If sworn in any place not being a part of His Majesty's dominions, before any person authorised to administer oaths under the Commissioners for Oaths Act, 1889, sections 4 and 6 ; or under the Commissioners for Oaths Act, 1891, section 2, or under the Commissioners for Oaths (Prize Proceedings) Act, 1907, or before a notary public, or before a Judge or magistrate, the signature of such notary public, Judge, or magistrate being authenticated by the official seal of the Court to which he is attached, or by the official seal of the Supreme Court of the country where the affidavit is sworn, or by the certificate of a consular officer.

7. The reception of any affidavit as evidence may be objected to, if the affidavit has been sworn before the solicitor for the party on whose behalf it is offered, or before a partner or clerk of such solicitor.

8. Every affidavit shall, before being used as evidence, be filed in the Registry together with all exhibits thereto and a copy of such affidavit shall be served on the other parties to the cause.

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## ORDER XXII.

### *Oaths.*

1. The Registrar, any commissioner for oaths, any officer of Customs and Excise authorised by the Commissioners of Customs and Excise and any other person directed or empowered to administer oaths in prize proceedings may administer oaths therein.

2. The Judge may appoint any person to administer oaths in causes either generally or in any particular proceeding.

3. Any person to whom an oath is administered shall swear in the manner provided by the Oaths Act, 1909, or in such manner as is provided by the law regulating the manner of taking oaths in the Court.

4. If any person tendered for the purpose of giving evidence, whether orally or by affidavit, objects to take an oath or is not a Christian, or is objected to as incompetent to take an oath, or is by reason of any defect of religious knowledge or belief incapable of comprehending the nature of an oath, the Judge or person authorised to administer the oath shall, if satisfied that the taking of an oath would have no binding effect on his conscience, permit him, in lieu of an oath, to make a declaration.

5. Forms of oaths and declarations in lieu of oaths will be found in Appendix A, Nos. 50 and 51.

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## ORDER XXIII.

### *Consents and Agreements.*

Any consent or agreement in writing, signed by the parties or by their solicitors, may, if the Registrar thinks

it reasonable, be filed, and shall thereupon become an order of the Court, and have the same effect as if such order had been made by the Judge.

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#### ORDER XXIV.

##### *Subpœnas.*

1. Any party desiring to compel the attendance of a witness for the purpose either of giving evidence or of producing any document may serve him with a subpœna, which shall be prepared by the party and issued under the seal of the Court.

Forms of subpœna shall be such as are for the time being in force in the High Court, or in the case of a Court other than the High Court such as are for the time being in force in that Court in the exercise of its ordinary jurisdiction.

2. A subpœna may contain the names of any number of witnesses, or may be issued with the names of the witnesses in blank.

3. Service of the subpœna must be personal, and may be made by the party or his agent, and shall, if necessary, be proved by affidavit.

4. Refusal or neglect to attend on subpœna issued as aforesaid, or to give evidence on attendance thereunder, shall be deemed to be contempt of Court and may be dealt with accordingly.

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#### ORDER XXV.

##### *Copies. Printing. Office Copies.*

1. Depositions, pleadings, affidavits, and all other documents and copies thereof may be either written, typed, or printed as may be most convenient, except transcripts of the evidence of a witness taken before a hearing, which shall be printed, unless the Registrar shall otherwise order. Any dispute between the parties as to whether a document should be written, typed, or printed shall be decided by the Registrar on the application, without a summons, of any party.

2. Where a document is printed the rules as to printing for the time being in force in the High Court, or in the case of a Court other than the High Court the rules as to printing for the time being in force in that Court in the

exercise of its ordinary jurisdiction shall have effect as if such rules were part of these rules.

3. Any person entitled to inspect any document in a cause, shall on payment of the proper charges for the same be entitled to an office copy thereof.

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## ORDER XXVI.

### *Payments into and out of Court.*

1. In causes instituted in the High Court all funds and moneys to be paid into Court, and all securities to be placed to the credit of any such causes, shall be dealt with in the manner in which moneys or securities paid or transferred into Court are usually dealt with in the exercise of the ordinary jurisdiction of the Court.

2. In causes instituted in a Court other than the High Court all funds and moneys to be paid into Court, and all securities to be placed to the credit of any such causes, shall be transferred, paid, or placed to the account or credit of the proper officer of the Court to whom moneys paid into Court are usually paid in the exercise of the ordinary jurisdiction of the Court, and shall be placed in the books of the said officer to the credit of "Prize Moneys", and of the particular ship or aircraft in respect of which the same shall be transferred, paid, or placed. If there is no such officer as above, the payments shall be made to the Registrar who shall open an account in a bank to be approved by the Judge in respect of the particular ship or aircraft in respect of which the said moneys shall be transferred, paid, or placed.

3. No money shall be paid out of Court except in pursuance of a decree or order of the Judge.

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## ORDER XXVII.

### *Enforcement and Execution of Decrees and Orders.*

1. Where the Judge condemns property as prize the decree of condemnation may be enforced—

(1) if the property is still under arrest, by sale of such property:

Provided that on the application of the proper officer of the Crown the Court shall order delivery of the property to the Crown in

lieu of sale, and if at the time of such application an order for sale has already been made but no sale has taken place, the order for sale shall be rescinded for the purpose of giving effect to such application, but the order for delivery to the Crown may, if the Court thinks fit, be made subject to payment by the Crown of such costs, expenses, or other sums, other than Fee 49 in Appendix B, as might have been ordered to be paid out of the proceeds of sale if the property had been sold under order of the Court ;

- (2) if the property has been sold before condemnation and the proceeds have not already been paid into Court, by order to the persons holding the same to pay the same into Court ;
- (3) in respect of freight found due for the carriage of goods in a ship or aircraft condemned as prize, by arrest of the goods so carried until payment into Court of such freight or by order against the owner of the goods, or other persons holding, or responsible for, such freight, to pay the same into Court ;
- (4) so far as a decree deals with costs and expenses (other than costs and expenses ordered to be paid out of proceeds), by order against the parties ordered to pay the same or their bail ;
- (5) if the property has been released on bail before condemnation, by order against the bail.

2. Where the Judge decrees property taken or seized as prize to be restored to the owner thereof the decree shall be carried out by means of a release as prescribed in Order XIII : Provided that the Judge may order such release upon such terms as to the payment of costs and expenses and freight (if any is due), or otherwise, as to the Judge may seem just, and if such terms are not complied with or such payments are not made within a time to be named in the order, may direct the appraisalment and sale of such property and the payment into Court of the proceeds of sale, and the payment thereof of such costs and expenses or freight.

3. Where in a decree restoring a ship or aircraft it is pronounced that freight is due in respect of cargo carried therein and payment of such freight is ordered, the decree

may be enforced as regards the payment of freight against the cargo or the owners thereof—

- (1) if the cargo has been condemned, by payment out of the proceeds of the sale of such cargo ;
- (2) if the cargo has been unladen and sold before adjudication and the proceeds of the sale are still in Court, by payment out of the proceeds of sale ;
- (3) if the cargo has been unladen, but still remains under the arrest of the Court, by sale of such cargo and payment out of the proceeds of sale ;
- (4) if the cargo has been unladen and has been restored to the owner on bail, by order against the bail to pay the freight into Court ;
- (5) if the cargo has been unladen and has been restored to the owner without bail, by order against the owner or person to whom the same has been restored, or against any person having received or being in possession of such cargo or freight, to pay such freight into Court.

4. Any decree or order other than a decree of condemnation or restitution and not expressly provided for by the Prize Acts 1864 to 1939 or by these Rules, may be enforced by order against the parties against whom such decree or order is made, or may be enforced in the same manner as a judgment, decree or order of the High Court in the exercise of its Admiralty jurisdiction, or, in the case of a Court other than the High Court, in the same manner as a judgment, decree or order of that Court in the exercise of its ordinary jurisdiction may be enforced.

5. Forms of order and decrees will be found in Appendix A, Nos. 52 and 53 (i) to (xxviii).

6. The Rules of this Order shall apply to the enforcement by the Court of decrees or orders of any other Court or of the Judicial Committee of the Privy Council.

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## ORDER XXVIII.

### *Detention.*

1. Where it is held in a suit for condemnation that the ship or aircraft is an enemy ship or aircraft but in pursuance of some international convention or otherwise is only liable to detention and not to condemnation, the decree (Appendix

A, Form 53, ii and iv) shall direct the marshal to retain the ship or aircraft in his custody until further orders.

2. Where a decree of detention has been made under Rule 1 the ship or aircraft shall be kept at such port or place as the Court may from time to time direct.

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## ORDER XXIX.

### *Requisition.*

1. Where it is made to appear to the Judge on the application of the proper officer of the Crown that it is desired to requisition on behalf of His Majesty a ship or aircraft in respect of which no final decree of condemnation has been made, he may order that the ship or aircraft shall be appraised, and that upon an undertaking being given in accordance with Rule 5 of this Order the ship or aircraft shall be released and delivered to the Crown.

2. Where a decree for the detention of a ship or aircraft has been made in accordance with Order XXVIII, the proper officer of the Crown may file a notice (Appendix A, Form No. 54) that the Crown desires to requisition the same, and thereupon a commission (Appendix A, Form No. 55) to the marshal directing him to appraise the ship or aircraft shall issue. Upon an undertaking being given in accordance with Rule 5 of this Order the ship or aircraft shall be released, and delivered to the Crown.

Service of this notice shall not be required before filing but copies thereof shall be served upon the parties by the proper officer of the Crown as soon thereafter as possible.

3. Where in any case of requisition under this Order it is made to appear to the Judge on behalf of the Crown that the ship or aircraft is required for the service of His Majesty forthwith, the Judge may order the same to be forthwith released, and delivered to the Crown, without appraisement.

4. In any case where a ship or aircraft has been requisitioned under the provisions of this Order, and whether or not an appraisement has been made, the Court may, on the application of any party, fix the amount to be paid by the Crown in respect of the value of the ship or aircraft.

5. In every case of requisition under this Order an undertaking in writing shall be filed by the proper officer of the Crown for payment into Court on behalf of the Crown of the



appraised value of the ship or aircraft, or of the amount fixed under Rule 4 of this Order, as the case may be, at such time or times as the Court shall declare by order that the same or any part thereof is required for the purpose of payment out of Court.

6. Where in any case of requisition under this Order it is made to appear to the Judge on behalf of the Crown that the Crown desires to requisition the ship or aircraft temporarily, the Court may, in lieu of an order of release, make an order for the temporary delivery of the ship or aircraft to the Crown, and subject as aforesaid the provisions of this Order shall apply to such a requisition; provided that, in the event of the return of the ship or aircraft to the custody of the Court, the Court may make such order as it thinks fit for the release of the undertaking given on behalf of the Crown or the reduction of the amount undertaken to be paid thereby, as the case may be; and provided also that, where the ship or aircraft so requisitioned is subject to the provisions of Order XXVIII, Rule 1, relating to detention, the amount for which the Crown shall be considered liable in respect of such requisition shall be the amount of the damage, if any, which the ship or aircraft has suffered by reason of such temporary delivery as aforesaid.

7. The proceedings in respect of a ship or aircraft requisitioned under this Order shall continue notwithstanding the requisition.

8. In any case of requisition of a ship or aircraft in respect of which no cause has been instituted, any person interested in such ship or aircraft may, without issuing a writ, provided he does not intend to make a claim for restitution or damages, apply by summons for an order that the amount to be paid in respect of such ship or aircraft be fixed by the Court, and the Judge may, on the hearing of such summons, order the ship or aircraft to be appraised or to be valued or give such other directions for fixing the amount as he may think fit.

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## ORDER XXX.

### *Prize Subrage.*

1. A ship or aircraft brought within the jurisdiction for adjudication after recapture from the enemy, but liable to restoration on payment of salvage, shall (except as herein-after provided) be protected against by writ, and, if so ordered

by the Judge, on pleadings, in the same form and manner as all other ships or aircraft captured as prize.

Forms of writ and of pleadings in prize salvage will be found in Appendix A, Nos. 5 and 13 (ii).

2.—(a) Where a ship or aircraft, on recapture from the enemy by any of His Majesty's ships or military aircraft, or by any persons other than its own crew, which, if brought within the jurisdiction by the recaptors, would have been liable to restoration on payment of salvage, is with the consent of the recaptors allowed to prosecute its voyage, or otherwise parts company with or ceases to be in the possession of the recaptors: or

(b) Where a ship or aircraft captured by the enemy is recaptured by the crew of such ship or aircraft:

In either case the recaptors may take proceedings to recover the salvage due in respect of recapture (if any), either *in rem* or *in personam*.

3. Within twelve days after a writ has been served, the owner shall file an affidavit setting out the value of the property claimed or alleged to have been salvaged, or an agreement with the recaptors as to such value.

Forms of affidavit and of agreement of value will be found in Appendix A, Nos. 56 and 57.

4. Where no claim is made by an owner, or no appearance is entered, or default is made in filing an affidavit or agreement of value, or where the recaptors are dissatisfied with the value deposited to, the Judge may, on the application of the recaptors, direct the property to be appraised by the marshal or otherwise valued.

5. If no appearance is entered the recaptors may, subject to the filing of an affidavit of service (Appendix A, Form 10), set the case down for hearing by default; in all other cases the recaptors may, at any time after appearance entered, apply for a day for the hearing.

6. Where at the time of a decree or order awarding prize salvage the ship or aircraft is under arrest, the decree or order of the Court may be enforced by sale thereof and payment of the amount due out of the proceeds of sale.

7. Where a ship or aircraft under arrest has been released on security being given, the decree or order awarding prize salvage may be enforced—

(1) if money has been paid into court, by order for payment out;

- (2) if bail has been given, by order for payment against the bail, and execution against the bail in default of payment.

8. Where the proceedings for prize salvage have been taken *in personam*, the decree or order may be enforced against the owner, and execution issued against him. If the owner makes default in payment, the Judge may direct a warrant to issue for the arrest of the ship or aircraft on its coming within the jurisdiction of the Court, and may order a sale thereof and payment of the award to be made out of the proceeds of such sale.

9. Where any salvage is awarded to any persons other than officers and crews of His Majesty's ships of war or military aircraft, either alone or conjointly with such officers and crews, the Judge may make an order apportioning such salvage between such persons or between such persons and such officers and crews, in such proportions as to the Judge shall seem fit :

Provided that nothing herein contained shall be taken to authorise the distribution of salvage among such officers and crews or to affect any proclamation of His Majesty as to the distribution of prize money.

Forms of decree in prize salvage will be found in Appendix A, No. 53 (xiii) to (xvii).

10. No decree or order for the payment of salvage to salvors shall be made unless and until the Judge is satisfied that no persons other than the said salvors are entitled to share in such salvage.

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## ORDER XXXI.

### *Land Expeditions and Conjunct Capture with Ally.*

A ship taken by land expedition within the meaning of the Naval Prize Act, 1864, section 34, or by a conjunct capture with an ally within the meaning of section 35 of the said Act, shall be proceeded against and dealt with, as far as possible, in the same manner as hereinbefore provided in the case of any other ship captured as prize.

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## ORDER XXXII.

### *Joint Capture, Flag Officers' Claims, and other Conflicting Claims between Captors.*

1. Any person claiming to share as joint captor (hereinafter called "the petitioner") may, at any time after

the institution of a cause relating to a ship or aircraft in respect of which he claims a share, proceed as hereinafter provided :

- (1) A writ (Appendix A, Form No. 6) shall be issued by the petitioner in the Registry, instituting a cause of joint capture.
- (2) If the cause is instituted before condemnation of the ship or aircraft in respect of which the petitioner claims to share, or in prize salvage before adjudication, the petitioner shall, except in the case of a flag officer claiming to share by virtue of his flag, within six days after issuing his writ give security to the satisfaction of the Court to contribute to the actual captors a just proportion of any costs, charges, expenses or damages that may be incurred by or awarded against the actual captors on account of the capture and detention of the prize. Within ten days after such security is given the petitioner shall file in the Registry a petition setting out the material facts on which he relies to establish his claim to share as aforesaid.
- (3) If the cause is instituted after condemnation of the ship or aircraft in respect of which the petitioner claims to share, or in prize salvage after adjudication, the Judge shall, upon sufficient cause being shown by affidavit why the application was not presented before condemnation or adjudication, and upon payment being made and security being given (as hereinbefore provided) allow the writ to be served upon the party to whom the ship or aircraft has been condemned (hereinafter called "the respondent"), or in prize salvage on the captors, who shall show cause why the petitioner should not be pronounced to be a joint captor of the said ship or aircraft.
- \* (4) Where the cause is instituted after condemnation the petitioner shall, within ten days after such payment has been made and such security has been given, file a petition setting out all the material facts on which he relies to establish his claim to share as aforesaid, and serve the same as hereinbefore provided.
- (5) The respondent shall appear to the writ by entering an appearance (Appendix A, Form No. 8) in the Registry within the time named in the writ.

2. The respondent, if he desires to contest the right of the petitioner to share, shall file an answer.

If the respondent admits the right of the petitioner to share, he shall file an admission in the Registry.

A copy of every pleading shall be served on the opposite party.

Forms of the above pleadings will be found in Appendix A, No. 13 (iii).

3. Upon the answer, and the reply thereto (if any), or admission being filed, the petition shall be heard in Court, on an early day to be appointed by the Registrar, upon the application of either party, upon such evidence as the Judge shall think fit.

4. If in a cause instituted against a ship or aircraft for condemnation as prize, or in a cause for prize salvage, a cause of joint capture, is instituted before condemnation or adjudication, the Judge may, at the hearing of the principal cause, upon condemnation of the ship or aircraft as lawful prize to the Crown, determine the title of the petitioner to share as aforesaid.

Forms of decree in joint capture will be found in Appendix A, No. 53 (xviii) to (xxi).

5. The costs of and occasioned by the petition shall, as the Judge shall direct, be borne by the petitioner or respondent or be paid out of the proceeds of the ship or aircraft if condemned.

6. Except by special leave of the Judge no party shall be admitted to claim to share as a joint captor in a prize, or in prize salvage, unless he shall institute his cause and file his petition within six months from the date on which the Judge shall have pronounced any other party entitled to such prize, or prize salvage.

7. A claim by a flag officer to share in prize, or prize salvage, by virtue of his flag shall not be made until after condemnation, and shall then be made in the same form and manner, and the same proceedings shall be had thereon, as in cases of asserted joint capture:

Provided, that such flag officer shall not be required to pay costs or give security for costs.

8. Where in any proceedings instituted for condemnation, or for prize salvage, the title or interest of the party instituting such proceedings is denied by any other party

who asserts that he has no claim or the sole title or interest in the prize, or prize salvage, proceedings may be taken for the purpose of determining said title or interest in the form and manner herein provided, and determining the title and interest in a clear and open manner:

Provided that the petitioner shall not be required to give any security or pay any costs before so proceeding unless so ordered by the Judge and that the form of proceedings shall assert such sole title and interest instead of a joint title and interest, and that the petition shall be filed within ten days after the cause is instituted by the petitioner instead of after security given.

9. All other applications to Court in prize procedure or prize salvage shall, unless the Judge shall otherwise direct, be made by motion.

### ORDER XXXIII.

#### *Prize Bounty.*

In claims for prize bounty the procedure shall be as follows:—

- (1) where the ship is brought in for adjudication the application for a decree under the Navy Prize Act, 1874, section 22, shall be made in Court <sup>at 25.</sup> at the hearing of the principal action, or as soon thereafter as possible;
- (2) where the ship has been destroyed, or, having been taken, has not been brought in for adjudication, the application for a decree as aforesaid shall be made by motion in Court;
- (3) not less than four clear days before such application, notice thereof shall be served upon the proper officer of the Crown;
- (4) the witnesses in support of the application shall be examined before the Judge in Court, or their evidence may be given by affidavit;
- (5) if the Judge makes a decree in favour of the applicant, he shall, as respects other than the original applicant, send the same to the Admiralty.

the Judge may upon the hearing of the application, or at a later date if he shall see fit, make a decree declaring the title of the applicants to the prize bounty, and stating the amount thereof. If there are other persons claiming to share in the bounty, the Judge may make a decree that bounty is due, stating the amount thereof but reserving the question to whom the said bounty is due ;

Forms of decree will be found in Appendix A, No. 53 (xxv) to (xxviii) ;

- (6) all claims to share as joint captors in prize bounty shall be, as far as possible, subject to the same procedure and rules, and be heard and determined in the same manner, as hereinbefore provided in the case of claims to share as joint captors in prize.

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#### ORDER XXXIV.

##### *Distribution and Naval Agency. (a)*

In questions concerning the distribution or investment of prize moneys, whether the proceeds of prize, prize salvage, or prize bounty, distributable under the provisions of the Naval Agency and Distribution Act, 1864, or otherwise, and in questions concerning the remuneration of ships' agents under the said Act, the procedure shall be as follows :—

- (1) any application for distribution or investment of such money shall be by motion ;
- (2) no motion shall be heard unless four days' previous notice thereof, intituled in the cause to the credit of which such money stands or in which such money has been pronounced due, has been served by the applicant upon all parties interested, including (if they are not applicants) the Lords of the Admiralty ;
- (3) the Judge may, if he thinks fit, direct any application for distribution or investment to be heard on pleadings ;

- (4) evidence on such applications shall be by affidavit, but the Judge may direct any witness to be examined or cross-examined ;
- (5) in the taxation of the costs, charges, and expenses of the officers and crew of any of His Majesty's ships or of any ships' agent under section 13 of the Naval Agency and Distribution Act, 1864, the same procedure shall be followed as is hereinbefore provided for the taxation of costs ;
- (6) where any difference within the meaning of section 20 of the Naval Agency and Distribution Act, 1864, arises between ships' agents as to the apportionment of their percentage, any such agent may take out a summons intituled in the cause in which the question arises calling upon all other persons interested to show cause why the matter should not be referred to the Registrar, and upon such summons and proof of due service thereof on such persons an order may be made referring such difference to the Registrar. Upon report made by the Registrar any party may object to the same. Order XVII shall apply, as far as possible, to references under this Order.

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### ORDER XXXV.

#### *Instruments and other Documents, and the Service thereof.*

1. Every warrant, release, commission, and other instrument to be executed by any officer of, or commissioner acting under the authority of, the Court, shall be prepared in the Registry, and shall be issued under the seal of the Court.

2. The seal of the Court to be used for the purposes of these Rules shall be such as the President shall from time to time direct.

3. Every document issued under the seal of the Court shall bear date on the day of sealing, and shall be deemed to be issued at the time of the sealing thereof.

4. Every instrument to be executed by the marshal shall be left with the marshal by the party at whose instance it is issued, with written instructions for the execution thereof.



5. Except in the case of an order for committal, it shall not be necessary to the regular service of an order that the original order be shown if an office copy be exhibited.

6. All notices, pleadings, summonses, orders, and other documents, proceedings, and written communications in respect of which personal service is not required shall be sufficiently delivered or served if left within the prescribed hours at the address for service of the person to be served with any person resident at or belonging to such place. The prescribed hours shall be such as are appointed by the President by general order a copy of which shall be affixed in some prominent place in the Court of Registry.

7. Where no appearance has been entered for a party, or where a party has omitted to give an address for service, all notices, pleadings, summonses, orders and other documents, proceedings, and written communications in respect of which personal service is not required may be served by filing them in the Registry.

8. All orders (except as in these Rules otherwise provided), disobedience to which would render a party liable to committal, shall be served personally.

9. Where personal service of any order, notice, pleading, summons or other document, proceeding, or written communication is required by these Rules or otherwise, the service shall be effected by showing it to the party to be served and by leaving with him a copy thereof.

10. Where personal service of any notice, pleading, summons, order or other document, proceeding, or written communication is required by these Rules or otherwise, and it is made to appear to the Judge that the person to be served is under disability or that prompt personal service cannot be effected, the judge may order upon whom, or in what manner, substituted or other service is to be made, or may order notice by letter, advertisement or otherwise to be given in lieu of service.

11. The service of every warrant or other instrument by the marshal shall be verified by his certificate.

Form of certificate of service will be found in Appendix A, No. 58.

12. The Judge may direct that any summons, order, notice, or other instrument shall be served on any party or person in a foreign country, and the procedure prescribed by Order II. Rules 16 to 19 inclusive, with reference to service of notice of a writ shall apply to the service of any summons, order, notice, or other instrument so directed to be served.

## ORDER XXXVI.

### *Notices from the Registry.*

Any notice from the Registry may be either left at, or sent by post to, the address for service of the party to whom notice is to be given; and the time at which the notice if posted would be delivered in the ordinary course shall be considered the time of service thereof.

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## ORDER XXXVII.

### *Filing.*

1. Documents shall be filed by leaving the same in the Registry, with a minute stating the nature of the document, and the date of filing it. A form of minute on filing documents will be found in Appendix A, No. 59.

2. Any number of documents in the same cause may be filed with one and the same minute.

3. Save as otherwise provided by these Rules, before any document, except affidavits as to ship papers, aircraft papers, bail bonds, documents issued from the Registry and minutes, is filed, a copy thereof shall be delivered to or served on the adverse party, if any, and no document, except as aforesaid, shall be filed without a certificate endorsed thereon, signed by the party filing the same, that a copy thereof has been so delivered or served upon such adverse party, if any.

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## ORDER XXXVIII.

### *Time: Enlargement and Abridgment.*

1. In all matters in regard to the time for doing any act or taking any proceeding, the ordinary procedure in regard to time in force in the High Court, or, in the case of a Court other than the High Court, the procedure in regard to time in force in that Court in the exercise of its ordinary jurisdiction, shall prevail.

2. The Judge may, on the application of either party, enlarge or abridge the time prescribed by these Rules or forms, or by any order made under them, for doing any act or taking any proceeding, upon such terms as to filing

shall seem fit, and any such enlargement may be ordered, although the application for the same is not made until after the expiration of the time prescribed.

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### ORDER XXXIX.

#### *Marshal.*

1. For the performance of any of his duties the marshal may appoint or employ competent persons as his substitutes.

2. The marshal shall execute all instruments issued from the Court which are addressed to him, and shall make returns thereof.

3. Whenever in respect of any place within the jurisdiction at which a ship or aircraft taken as prize may be there is no person appointed or employed to act as substitute of the marshal, then, for the purposes of the execution and service of warrants and other instruments, the custody of prize and for such other purposes as the President may direct,—

(a) in a cause relating to a ship, the principal officer of Customs at such place, and

(b) in a cause relating to an aircraft, such person as the President shall appoint,

shall be deemed to be the substitute of the marshal and for such purposes shall be an officer of the Court.

4. Persons may be appointed or employed to act as substitutes of the marshal for the purposes mentioned in Rule 3 in the ports of any ally in war of His Majesty, or for the purpose of the service of any process out of the jurisdiction.

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### ORDER XL.

#### *Hours and Holidays.*

The Registry and the marshal's office shall be open for the transaction of prize matters at such times as they are open for the transaction of the business of the Court when exercising its ordinary jurisdiction. Provided, that the Registrar shall make arrangements for the issue of process in all urgent cases when the offices are closed.

## ORDER XLI.

### *Records of the Court.*

1. There shall be kept in the Registry a book to be called the minute book, in which shall be entered in order of date under the head of each cause, and on a page numbered with the number of the cause, a record of the institution of the cause, of all appearances entered, of all documents issued or filed, of all witnesses examined, and of all acts done, and in which shall in the like order be entered in full all orders and decrees of the Court, whether made by the Judge, or by the Registrar, or by consent of the parties in the cause.

Form of minutes of examination of witnesses will be found in Appendix A, No. 60.

2. A copy of any order or decree certified by the Registrar as correct shall be deemed to be a true copy of such order or decree for all purposes.

3. There shall be kept in the Registry a caveat warrant book, a caveat release book, and a caveat payment book, in which all such caveats respectively and the withdrawal thereof shall be entered.

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## ORDER XLII.

### *Certificates of Sale, Condemnation, and Restitution.*

1. Where property taken or seized as prize is sold by order or decree of the Court, any person to whom such property is sold may, within one month from the date of the sale or condemnation of the property, whichever last happens, and after notice to the proper officer of the Crown, apply to the Judge for an order directing the issue of a certificate of condemnation and sale, or of sale only; and upon such application the Judge shall, unless good cause is shown to the contrary, direct a certificate to be issued, and the same shall be issued in one of the forms in Appendix A, Nos. 61, 62, 63, 64.

2. Where such certificate is issued in respect of a ship, the applicant shall be entitled to have a like certificate endorsed on the bill of sale by which the ship is sold to him, on production of the bill of sale to the Registrar.

Where such certificate is issued in respect of an aircraft or of goods or cargo, the applicant shall be entitled to have

a like certificate endorsed on the contract or sold note (if any) under which such aircraft, goods or cargo were sold to him, on production of such contract or sold note to the Registrar.

3. Where the property taken or seized as prize is restored to the owner thereof by order or decree of the Court, the owner may, within one month from the date of the order or decree, and after notice to the proper officer of the Crown, apply to the Judge for an order directing the issue of a certificate of restitution, and the Judge shall, unless good cause is shown to the contrary, direct a certificate to be issued in one of the forms in Appendix A, No. 65 or 66.

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### ORDER XLIII.

#### *Forms, Fees and Costs.*

1. The forms in Appendix A shall be followed with such variations as the circumstances may require.

2.—(a) The fees to be taken in prize matters in a Court (other than a Colonial Court of Admiralty within the meaning of the Colonial Courts of Admiralty Act, 1890) duly authorised to exercise prize jurisdiction by the Court and the officers thereof shall be those set out in Appendix B or so near thereto as the currency in use in the place in which such Court is situate will permit. The said fees, other than fees Nos. 46 and 49 (which shall be paid by transfer from the proceeds in Court to the account of fees on proceedings) shall be taken by means of stamps. Stamps shall be of the same nature and design and shall be affixed and cancelled in the same manner as stamps used for the taking of fees in respect of the same or similar items in the ordinary business of such Court.

(b) The fees to be taken in prize matters in a Court, being a Colonial Court of Admiralty within the meaning of the Colonial Courts of Admiralty Act, 1890, duly authorised to exercise prize jurisdiction shall be fixed, collected and applied in the manner provided by section 3 (4) of the Prize Courts Act, 1894, that is to say, in like manner as the fees arising in respect of the Admiralty business of such Court under the Colonial Courts of Admiralty Act, 1890.

3. No document shall be filed, no process issued, no decree or order made, nor act done by the Court or Registrar until the fees due and payable in respect of such filing, issue, decree, order or act, respectively, shall have been paid into the Registry unless it is otherwise ordered by the Judge.

4. The costs, charges and expenses to be allowed to the practitioners in the Court in prize matters shall be those set out in Appendix C or so near thereto as the currency in use in the place in which such Court is situate will permit, increased by the same percentage as that which is for the time being provided by Order LXV, Rule 10 (2), of the Rules of the Supreme Court, 1883, or any Rule amending the same, as the percentage by which the total in any bill of costs of the fees prescribed by that Order shall be increased.

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## ORDER XLIV.

### *Appeals.*

1. In this Order, unless the context otherwise requires :—

“Appeal” means “Appeal to His Majesty in Council”;

“Judgment” includes decree, order or decision;

“Record” means the aggregate of papers relating to an appeal (including the pleadings, proceedings, evidence, and judgment) proper to be laid before His Majesty in Council on the hearing of the appeal.

2. Applications to the Court for the admission of an appeal as of right, or for leave to appeal, shall, if not made at the time that the judgment appealed from is delivered by the Court, be made by motion within seven days from the date of such judgment, and the applicant shall give to the opposite party notice of his intended application.

3. An appeal shall only be admitted, or leave to appeal granted, by the Court—

(a) upon the appellant, within a period to be fixed by the Court, entering into sufficient security to the satisfaction of the Court, if so required, for the due prosecution of the appeal and the payment of all such costs as may become payable to the respondent in the event of the appeal being dismissed for non-prosecution or of His Majesty in Council ordering the appellant to pay the respondent's costs of the appeal; and

(b) upon such conditions, if any, as to the time or times within which the appellant shall take the necessary steps for the purpose of procuring the preparation of the record and the completion

thereof to the Privy Council as the Court, having regard to all the circumstances of the case, may think it reasonable to impose.

4. The Court shall have power, when admitting the appeal or granting leave to appeal, either to direct that the said judgment shall be carried into execution or that the execution thereof shall be suspended pending the appeal, and, in case the Court shall direct the said judgment to be carried into execution, the person in whose favour it was given shall, before the execution thereof, enter into sufficient security, to the satisfaction of the Court, for the due performance of such order as His Majesty in Council shall think fit to make thereon.

5. As soon as an appeal has been admitted, whether by an order of the Court or by an order of His Majesty in Council granting special leave to appeal, the appellant shall without delay take all necessary steps to have the record prepared forthwith.

6. The preparation of the record shall be subject to the supervision of the Court, and the parties may submit any disputed question arising in connection therewith to the Court.

7. The Registrar as well as the parties shall endeavour to exclude from the record all documents (more particularly such as are merely formal) that are not relevant to the subject matter of the appeal, and generally to reduce the bulk of the record as far as practicable.

8. Records in appeals to His Majesty in Council shall be printed in the form known as demy quarto and may be printed either in or out of England. The number of lines in each page shall be forty-seven or thereabouts and every tenth line shall be numbered in the margin.

Where the record is printed out of England, the Registrar shall, at the expense of the appellant, transmit to the Registrar of the Privy Council forty printed copies of such record, one of which copies he shall certify to be correct by affixing thereto the seal of the Court.

Where the record relates to an appeal from a Court out of England and is to be printed in England, or where the record relates to an appeal from the High Court in England, the Registrar shall, at the expense of the appellant, transmit to the Registrar of the Privy Council one certified copy of such record, together with an index of all the papers and exhibits in the case.

9. Where there are two or more appeals arising out of the same matter the Court may direct the appeals to be consolidated.

10. An appellant may, at any time before the record is transmitted to the Privy Council, withdraw his appeal on such terms as to costs and otherwise as the Court may direct.

11. Where an appellant fails to show due diligence in the prosecution of his appeal before the transmission of the record to the Privy Council, the Court may, on an application made by the respondent, dismiss the appeal or make such order as to costs or otherwise as the Court shall think fit.

12. Where at any time before the hearing of the appeal the record becomes defective by reason of the death or change of status of a party to the appeal, the Court shall, on an application made by any person interested, grant a certificate showing who, in the opinion of the Court, is the proper person to be substituted on the record in place of, or in addition to, the party who has died or undergone a change of status.

13. Where His Majesty in Council directs a party to bear the costs of an appeal incurred in the Court below, such costs shall be taxed by the proper officer of the Court in accordance with Order XIX, Rule 2.

14. The Court shall enforce any order or judgment of His Majesty in Council in like manner as any judgment or order of the Court.

15. An appellant whose appeal has been admitted shall prosecute his appeal in accordance with the rules for the time being regulating the general practice and procedure in appeals to His Majesty in Council so far as such rules may be applicable.

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## ORDER XLV.

### *Cases not provided for.*

In all cases not provided for by these Rules, the practice of the late High Court of Admiralty of England in prize proceedings shall be followed, or such other practice as the President may direct.



# ORDER XLVI.

## *Short Title.*

These Rules may be cited as "The Prize Court Rules 1939".

O.XLVI.

## APPENDIX A.

### FORMS.

[NOTE.—Every document issued from the Court or Registry must bear the Seal of the Court.]

#### No. 1.

O.II, 1.2.

#### HEADING AND TITLES OF CAUSES.

##### (i) *In Rem.*

19 . (*Here put number.*)

In the High Court of Justice. Probate, Divorce, and Admiralty Division [*or other Court, having prize jurisdiction*].

In Prize.

*[If the cause is instituted against a ship (or aircraft) only, or against a ship (or aircraft) and cargo, or against a ship (or aircraft), cargo, and freight, the title should be the name of the ship, or, as the case may be, the word "Aircraft" followed by the nationality and registration marks of the aircraft, and the name of the master.]*

The (Aircraft).

(*or, if the cause is instituted against cargo only :*)

Cargo *ex* ;

[*or, if the cause is instituted against goods other than cargo :*]

Goods taken at

(*or, if the cause is instituted against the proceeds realised by the sale of ship (or aircraft) or cargo or goods :*)

The proceeds of the ship (aircraft)

(*or*)

The proceeds of the cargo *ex*

(*or*)

The proceeds of the goods taken at

(ii) *In Personam.*

No.

[*Heading as above.*]

Between A.B., plaintiff,

and

C.D. and E.F., the owners of the ship (aircraft)  
, defendants,

or

C. D. and E.F., the owners of the cargo ex ship (air-  
craft)  
, defendants.

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No. 2.

WRIT OF SUMMONS IN A CAUSE (*General Form*). O. II, r. 3.

(*Heading and Title as in No. 1.*)

George the Sixth, by the Grace of God, of Great Britain, Ireland and the British Dominions beyond the Seas, King, Defender of the Faith.

To the owners and parties interested in the ship (aircraft) of the port of (registered in) and the goods laden therein [*if the cause is instituted against the ship (or aircraft) or cargo only, these words must be adapted accordingly*]. (*if the cause is instituted against goods other than cargo, say,* To the owners and parties interested in the goods taken at herein-after specified), seized and taken as prize by our ship of war , Commander (or by our Officers of Customs at , or as the case may be).

We command you that within thirty days after the service of this writ (*in a cause in personam add on you*), inclusive of the day of such service, you do cause appearances (*or an appearance*) to be entered for you in the Registry of our said Court in a cause instituted on our behalf by our Procurator General or other the proper officer of the Crown (*if the proceeding is against a droit of Admiralty, add in Our Office of Admiralty*) against the said ship (aircraft) and goods for the condemnation thereof as good and lawful prize *if claimed as droit of Admiralty, add*, and as droits and perquisites of Us in Our Office of Admiralty).

And take notice that in default of your so doing our said Court (or, in a cause in personam, the plaintiff) may proceed therein and judgment may be given in your absence.

Witness, &c. (in accordance with the form generally in use in the Court).

*Memorandum to be subscribed on the Writ.*

*N.B.*—This writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

Appearance hereto may be entered either personally or by solicitor at the Admiralty Registry, Royal Courts of Justice, London (or as the case may be).

*Indorsements to be made on the Writ before issue thereof.*

This writ was issued by the said \_\_\_\_\_, who resides at \_\_\_\_\_, or, this writ was issued by \_\_\_\_\_ of \_\_\_\_\_, whose address for service is \_\_\_\_\_, solicitor for the said \_\_\_\_\_, who resides at \_\_\_\_\_, or, this writ was issued by \_\_\_\_\_, of \_\_\_\_\_, whose address for service is \_\_\_\_\_, agent for \_\_\_\_\_, of \_\_\_\_\_, solicitor for the said \_\_\_\_\_, who resides at \_\_\_\_\_.

(If writ is issued by an officer of the Crown, state his name, title and address for service.)

[NOTE.—The address for service must be within three miles of the Registry.]

*Indorsement to be made on the writ after service thereof, and signed by the person serving the same.*

This writ was served by me by (state mode in which service was effected, whether on the ship, cargo or freight, or otherwise, according to Order II; or, if in personam, state the name of the person served and the place of service) on day, the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

Indorsed the \_\_\_\_\_ day of \_\_\_\_\_  
19 \_\_\_\_\_.

(Signed)

(Address)

No. 3.

O II, r. 5, 13.

WRIT OF SUMMONS IN A CAUSE FOR CONDEMNATION WHERE  
THE SHIP (AIRCRAFT) OR GOODS HAVE BEEN DESTROYED  
OR LOST.

[*Heading and Title as in No. 1 (i).*]

George the Sixth, &c. (*as in No. 2*).

To the owners and parties interested in the ship (aircraft), &c. (*as in No. 2*), seized and taken as prize by our ship of war , Commander [or by Our Officers of Customs at the port of (*or as the case may be*)], the said ship (aircraft) and goods having been destroyed (*or lost*) (*state generally the circumstances of the destruction or loss*) [*if the goods have been removed and brought in for adjudication without the ship (aircraft)*], add, and the said goods having been removed from the said ship (aircraft) and being now in custody of our said Court].

(*Remainder of form, indorsements, &c., as in No. 2.*)

[NOTE.—*If ship (aircraft) or goods only have been destroyed or lost, the above form must be altered accordingly.*]

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No. 4.

O II, r. 7, 14.

WRIT OF SUMMONS IN A CAUSE INSTITUTED AGAINST A  
CAPTOR.

[*Heading and Title as in No. 1 (ii).*]

George the Sixth, &c. (*as in No. 2*).

To

We command you that within thirty days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the Registry of our said Court in an action at the suit of , a subject of (*state nationality of petitioner*), claiming restitution of the ship (aircraft) , and damages for her (its) detention [*or damages for the loss or destruction of the said ship (aircraft)*].

And take notice, &c. (*as in No. 2*).

Witness, &c. (*as in No. 2*).

(*Indorsements, &c., as in No. 2.*)

O. II, r. 2, 14.  
O. XXX, r. 1.

## No. 5.

## WRIT OF SUMMONS IN PRIZE SALVAGE.

[*Heading and Title as in No. 1 (ii).*]

George the Sixth, &c. (*as in No. 2*).

To C.D., the owner (*or as the case may be*) of the ship (aircraft),

We command you that within thirty days after the service of this writ, inclusive of the day of such service, you do cause an appearance to be entered for you in the Admiralty Registry of our said Court in a cause of prize salvage instituted against you on behalf of .

And take notice, &c. (*as in No. 2*).

Witness, &c. (*as in No. 2*).

(*Indorsements, &c., as in No. 2.*)

O. II, r. 2.  
O. XXXII, r.  
1 (1).

## No. 6.

## WRIT OF SUMMONS IN JOINT CAPTURE OR RECAPTURE.

[*Heading and Title as in No. 1 (ii).*]

George the Sixth, &c. (*as in No. 2*).

To (the persons originally claiming as captors or recaptors).

We command you that within thirty days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the Registry of our said Court in a cause of joint capture (*or recapture*) instituted against you on behalf of (*insert names of persons claiming, as e.g., A.B., the Commander, and the crew of our ship of war*) asserting a claim to be pronounced joint captors (*or recaptors*) with you of the said ship (aircraft) , and the goods, wares and merchandise laden on board of her (it) [*or, of the goods, wares and merchandise ex the said ship (aircraft)* ], and to share in the proceeds thereof (*or, in the salvage payable in respect thereof*).

And take notice, &c. (*as in No. 2*).

Witness, &c. (*as in No. 2*).

(*Indorsements, &c. as in No. 2.*)

No. 7.

G. II., c. 13.  
O. XXXIV,  
r. 12.

NOTICE IN LIEU OF SERVICE OF A WRIT OUT OF THE  
JURISDICTION.

(Heading and Title as in No. 1.)

To , of .

Take notice, that , of , has instituted a cause against you, in the (*here insert the name of the Prize Court*), by writ of that Court, dated the day of , 19 , for (*copy the words of the writ showing the object for which the cause is instituted*), and you are required within days after the receipt of this notice, inclusive of the day of such receipt, to cause an appearance to be entered for you in the Registry of the said Court to the said cause; and in default of your so doing the said Court may proceed therein and judgment may be given in your absence.

You may appear to the said writ by entering an appearance personally or by your solicitor at the (*here insert the Registry of the Court*).

(Signed) of , &c.  
or of , &c.,  
Solicitor for

*N.B.*—This notice is to be used where the person to be served out of the jurisdiction is not a British subject, or the ship (aircraft) or goods are not the property of a British subject.

No. 8.

G. III., c. 1.  
O. XXX.  
O. XXXII,  
r. 1.

ENTRY OF APPEARANCE.

(Heading and Title as in No. 1.)

Enter an appearance for , owner of the ship (aircraft) above-mentioned (*or as the case may be*).

Dated the day of . 19

(Signed) , of

\*Address for service

Solicitor for the above-named , or agent for , of , Solicitor for the above-named .

\* An address for service within three miles of the Registry must be given.

## CLAIMS IN CAUSES FOR CONDEMNATION.

*(Headings and Titles as in No. 1.)*(i) *Claim by Master.*

The claim of \_\_\_\_\_, the master of the \_\_\_\_\_, a subject of His Majesty the King of \_\_\_\_\_ (or a citizen of \_\_\_\_\_ as the case may be), on behalf of (fill in name of owner of ship or aircraft), of (residence of owner), also a subject of His Majesty the King of \_\_\_\_\_ (or as above), the true, lawful, and sole owner of the said ship, her tackle, apparel, and furniture (or, the said aircraft), at the time she was taken and seized as prize by His Majesty's ship (aircraft) \_\_\_\_\_, \_\_\_\_\_, Commander, and brought into \_\_\_\_\_, [and, if the ship (aircraft) owners are also owners of the cargo or of part thereof] and of (describe the cargo, giving numbers, weight, and description) laden on board the said ship (aircraft) at the time of the capture thereof aforesaid (and if claim is made on behalf of cargo owners):

Also on behalf of \_\_\_\_\_, of \_\_\_\_\_, merchants, subjects (or citizens, &c., as above) of \_\_\_\_\_, the true, lawful, and sole owners of \_\_\_\_\_ (describe goods as above), also laden on board the said ship (aircraft) at the time of the capture aforesaid (and, if he has a private adventure):

And also for his private adventure consisting of for the said ship (aircraft), goods, and private adventure, as the true, lawful, sole, and entire property of (subjects or citizens), of \_\_\_\_\_ as aforesaid, and for freight, demurrage, and all such loss, costs, charges, damages, and expenses, as have arisen and been incurred, or may arise and be incurred, by reason of the capture and detention aforesaid.

(Signed)

C.D.,

Claimant.

(ii) *Claim by Agent.*

The claim of \_\_\_\_\_, of \_\_\_\_\_ merchant (or as the case may be), on behalf of Messrs. \_\_\_\_\_ and \_\_\_\_\_, of \_\_\_\_\_, merchants, the true lawful, and sole owners of \_\_\_\_\_ (enumerate and describe goods), which were laden and on board the said

ship (aircraft) at the time of the capture thereof by His Majesty's ship (aircraft) , Commander, and brought into ; for the said goods as the property of neutral subjects, and for all such costs, losses, damages, and expenses which have arisen, or shall or may arise, by reason of the capture and detention thereof as aforesaid.

(Signed)

C.D.,

*Claimant.*

*(iii) Claim by Managing Owner.*

The claim of , of , ship-owner (aircraft-owner) on behalf of himself and others, as the true and lawful owners of the above-named ship , her tackle, apparel, and furniture (or, the above-named aircraft ), at the time she (it) was taken and seized as prize by His Majesty's ship (aircraft), , Commander, and brought into

[or, at the time of her (its) seizure by the officers of His Majesty's Customs at ], for the said ship (aircraft) and for all losses, costs, charges, damages, demurrage, and expenses which have arisen, or shall or may arise, by reason of the seizure and detention of the said ship (aircraft) as prize.

(Signed)

C.D.,

*Claimant.*

*(iv) Claim by Master and Sole Owner.*

The claim of , the master of the said ship (aircraft) , a subject of His Majesty the King of , for and on behalf of himself, the true, lawful, and sole owner of the said ship, her tackle, apparel, and furniture (or, the said aircraft), at the time she (it) was taken and seized as prize by His Majesty's ship (aircraft)

, Commander, and brought into [or, at the time she (it) was taken and seized as prize whilst lying at by the officers of His Majesty's Customs]; for the said ship (aircraft) and for freight, demurrage, and all such loss, costs, and charges, damages and expenses as have arisen and been incurred, or shall or



may arise and be incurred by reason of the capture and detention aforesaid.

(Signed)

C.D.,

Claimant.

(v) *Claim by authority of Neutral Government.*

The claim of \_\_\_\_\_, of \_\_\_\_\_ merchant, by authority of His Excellency the (Ambassador, Minister for Foreign Affairs, *or as the case may be*) of the (Emperor, King, &c., *as the case may be*) of \_\_\_\_\_ on behalf of His Majesty the \_\_\_\_\_ of \_\_\_\_\_, for the said ship (aircraft) \_\_\_\_\_ whereof \_\_\_\_\_ was master \* [her tackle, apparel, and furniture], and for all and singular the goods, wares, and merchandise laden on board the same, at the time when the said ship (aircraft) and cargo were taken and seized as prize whilst in the ports or roads of \_\_\_\_\_, or in waters within three miles of the coast of \_\_\_\_\_ (or wherever the capture took place), of \_\_\_\_\_, by the \_\_\_\_\_, Commander, and carried to \_\_\_\_\_, for the said ship (aircraft) and cargo, as having been seized within the territories and jurisdiction of His Majesty aforesaid, the \_\_\_\_\_ of \_\_\_\_\_, and contrary to, and in violation of, the law of nations and of the rights and territories of the Crown of His Majesty aforesaid, the \_\_\_\_\_ of \_\_\_\_\_, (or as the case may be) (and contrary to, and in violation of, existing treaties between His Britannic Majesty and His Majesty aforesaid, the \_\_\_\_\_ of \_\_\_\_\_,) and for all freight, losses, costs, charges, damages, demurrage, and expenses which have arisen, or shall or may arise, by reason of the capture and detention of the said ship (aircraft) or cargo.

\*Omit in case of aircraft.

(Signed)

C.D.,

Claimant on behalf of the Government (or as the case may be) of \_\_\_\_\_

(vi) *Claim for Droit of Admiralty on Seizure in Port.*

The claim of C.D., Admiralty Proctor (or as the case may be), on behalf of Our Sovereign Lord the King, in His office of Admiralty, for the said ship the \_\_\_\_\_, whereof \_\_\_\_\_ was master, her tackle, apparel, and furniture, and any goods laden therein, seized and taken in port, in the United Kingdom (or as the case may be), by His Majesty's ship the \_\_\_\_\_, Commander, and proceeded against in the (here fill in the name of the Prize Court), as prize to the said ship.

For the said ship the . her tackle, apparel, and furniture, and any goods laden therein, seized and taken as aforesaid, and as such or otherwise subject to confiscation as prize, and as droits and perquisites of His Majesty in His office of Admiralty : and for all costs, losses, damages, and expenses that have arisen, or shall or may arise, and be due in the premises.

(Signed)

C.D.,

Claimant on behalf of the Admiralty.

(vii) *Claim for Droit of Admiralty on Capture by Non-Commissioned Ship.*

The Claim of C.D., Admiralty Proctor (*or as the case may be*), on behalf of Our Sovereign Lord the King, in His office of Admiralty, for the said ship, the Alpha, whereof was master, her tackle, apparel, and furniture, and any goods laden therein, seized and taken by the ship Beta, , Commander, and proceeded against as prize to the said ship, the Beta (*or His Majesty, as the case may be*).

For the said ship, the Alpha, her tackle, apparel, and furniture, and any goods laden therein, seized and taken as aforesaid by a ship other than a ship of war of His Majesty, and as such or otherwise subject to confiscation as prize, and as a droit and perquisite of His Majesty in His office of Admiralty.

(Signed)

C.D.,

Claimant on behalf of the Admiralty.

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NOTE.—Every claim must be indorsed by the claimant or his solicitor, with the grounds on which the claim is made, as follows :—

The grounds of the said claim are :—

- 1.
- 2.
- 3.

(State grounds concisely and in general terms.)

D. III, r. 5.  
O. XV, r. 9.  
O. XXX, r. 5.

## No. 10.

## AFFIDAVIT OF SERVICE OF WRIT.

(Heading and Title as in No. 1.)

I (name, address, and description of deponent) make oath and say as follows :—

I did, on the                      day of                      , 19    , serve the writ (or notice of the writ) herein by (state mode of service, or, if in personam state name of person served and the place of service) in accordance with the manner and form prescribed by the Rules of this Court.

(Signed)

Address,

or, Solicitor for

Sworn this                      day of                      , 19    , before me (name and authority of person before whom the affidavit is sworn).

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O. IV, r. 7.

## No. 11.

## AFFIDAVITS AS TO SHIP PAPERS, OR AIRCRAFT PAPERS.

(i) Ordinary Affidavit.

(Heading and Title as in Form 49.)

The

I, A.B., a                      , in His Majesty's navy, and of His Majesty's ship (aircraft)                      , whereof                      is Commander (or as the case may be), make oath and say as follows :—

1. The papers and writings hereunto annexed, and numbered from No.                      to No.                      inclusive, are all the ship papers (aircraft papers) which were delivered up or otherwise found on board the ship (aircraft) called the                      , whereof                      was master or Commander, and lately taken by His Majesty's said ship (or as the case may be), at which capture I, the said deponent, was present.

2. The said papers and writings are brought in and delivered as they were received and taken, without fraud, addition, subduction, or embezzlement, and in the same

condition (save the numbering thereof) as the same were delivered up or found on board the said ship (aircraft).

(Signed) A.B.

Sworn by the said on the day  
of , 19 .

Before me (*name, rank and authority of person before whom the affidavit is sworn*).

(ii) *Where Ship Papers or Aircraft Papers injured, altered, lost, mislaid, thrown overboard, found concealed, &c.* O. IV. r. 7.

[*Heading and commencement as in Form (i).*]

1. The papers and writings hereunto annexed, and numbered from No. to No. inclusive, are all the ship papers (aircraft papers) which were delivered up and found on board the ship (aircraft), whereof was master or Commander and lately taken by His Majesty's said ship (aircraft), at which capture I, the said deponent, was present.

2. By order of the said , I took charge of the captured ship (aircraft) to bring her in for adjudication.

3. After I so took charge (*set out the facts as they occurred*).

[*Where ship papers (aircraft papers) lost, mislaid, or thrown overboard, describe as accurately as possible each such document.*]

4. Save as aforesaid, the said papers and writings are brought in and delivered as they were received and taken, without any fraud, addition, subduction, or embezzlement, and in the same condition as received (save the numbering thereof).

Sworn, &c.

(Signed) A.B.

[NOTE.—This form must be adapted in accordance with the facts.]

(iii) *Where no Ship Papers (Aircraft Papers) delivered up or found.* O. IV. r. 7.

[*Heading and commencement as in Form (i).*]

1. I was present at the capture of the said ship (aircraft) whereof was master or Commander, and lately taken by His Majesty's said ship (aircraft).

2. No ship papers (aircraft papers) of any sort were delivered up or found on board the said ship (aircraft) or elsewhere at the time of the seizure or afterwards.

3. (*If anything has occurred to account for the absence of papers state the facts.*)

Sworn, &c.

(Signed)

A.B.

O. IV, r. 4.

(iv) *By Person having control of Ship Papers (Aircraft Papers) within the Jurisdiction.*

[*Heading as in Form (i).*]

I, A.B., merchant, of , make oath and say as follows:—

1. I am agent (*or as the case may be*) in this country for the owners of the said ship (aircraft) , and consignee of her (its) cargo.

2. The said ship (aircraft) arrived at on the day of , in the ordinary course of her voyage, and was about to discharge her cargo when she was seized as prize by the officers of His Majesty's Customs there.

3. Prior to such seizure the several papers and writings set out below were delivered to me in the ordinary course as agent (*or as the case may be*) aforesaid, to enable me to enter the said ship (aircraft) and procure the discharge of her (its) cargo.

4. The papers and writings hereto annexed and numbered from No. to No. , inclusive, are all the ship papers (aircraft papers) which were so delivered to me, or came into my possession or control, and are brought in and delivered as they were received and taken, without any fraud, addition, subduction, or embezzlement, and in the same condition (save the numbering thereof) as received.

Sworn, &c.

(Signed)

A.B.

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No. 12.

O. VI.

#### NOTICE OF DISCONTINUANCE.

(*Heading and Title as in No. 1.*)

Take notice, that this cause is hereby discontinued (*or, if not against all the parties appearing, as against the claimant*

, or as the case may be). (If the discontinuance is as to part only of the subject-matter of the cause, so far as it relates to .)

[If by a claimant, that the claimant hereby discontinues his claim in this cause (or, as against, &c., or, so far as it relates to, &c., as above).]

Dated this                      day of                      , 19 .

(Signed)                      G.H., of  
or Solicitor for the

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No. 13.

### PLEADINGS (a).

#### (i) PLEADINGS IN PROCEEDINGS FOR CONDEMNATION. O. VII.

##### *Petition.*

(Heading and Title as in No. 1.)

Writ issued                      19 .

##### *Petition.*

*J.K.*, solicitor for the claimants *C.D.* and *E.F.*, says as follows:—

1. The owners of the above-named ship (aircraft) are *C.D.* and *E.F.* The said *C.D.* resides at                      and is a subject of                      . The said *E.F.* resides at                      and is a subject of                      .

2. On the                      day of                      , the said *C.D.* purchased the said ship                      from *G.H.*, of                      , a subject of                      , who assigned the said ship to the said *C.D.*, by bill of sale dated the                      day of                      .

3. Prior to such assignment, the said ship                      was named the                      , and immediately thereafter the said *C.D.* changed the name of the said ship to that of the                      , and such change of name was duly entered at                      .

4. Immediately after such purchase and assignment, the said *C.D.*, by bill of sale dated the                      day of                      , assigned                      shares in the said ship to the said *E.F.*, and on the                      day of                      ,

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(a) NOTE.—These pleadings are given as examples only, and the forms should be adapted to the facts of each particular case.

the said ship was duly registered in the names of the said *C.D.* and *E.F.* at \_\_\_\_\_, and a certificate of registry, dated the \_\_\_\_\_ day of \_\_\_\_\_, was issued by \_\_\_\_\_, whereby it appears that the said *C.D.* and *E.F.* are the owners of the said ship, and they were at the time of such registration, and still are, the owners thereof.

5. On the \_\_\_\_\_ day of \_\_\_\_\_, the said ship loaded at \_\_\_\_\_ a cargo of \_\_\_\_\_ and subsequently sailed therewith on a voyage from \_\_\_\_\_ aforesaid bound to \_\_\_\_\_.

6. The said cargo consisted of (*describe the cargo, giving numbers, weight, &c.*), and was on the account and risk of \_\_\_\_\_, who are merchants carrying on business at \_\_\_\_\_, and are subjects of \_\_\_\_\_, and upon the account and risk of no other person whatsoever.

7. Whilst upon the voyage aforesaid, the said ship was taken as prize by \_\_\_\_\_, and although all the ship papers relating to the said ship and the said cargo were shown to the captors, she was brought into the port of \_\_\_\_\_ for adjudication.

8. There were at the time of such capture no contraband goods on board the said ship, and no subject of (*insert the name of Government at war with Great Britain*) or enemy of Great Britain had at the time of such capture, or at any other time material to the matters in this cause, any share, right, title, or interest in the said ship or cargo, or any part thereof.

9. There was no just ground for the capture and bringing in of the said ship.

The said *J.K.* prays that the Judge will decree restitution of the said ship to the said *C.D.* and *E.F.*, with damages and costs.

[*Or, if bail has been given, that the Judge will pronounce that the bail given on behalf of the said claimants to answer the value of the said ship (and goods) may be released and discharged, and that the said (insert names of captors) may be condemned in the damages and costs sustained by and*

occasioned to the said claimants by reason of such capture, and bringing in.]

(Signed)

W.X.,

Counsel (or Party).

Delivered this                      day of

*Answer.*

(Heading and Title as in No. 1.)

*Answer.*

G.H., solicitor for the commander, officers, and crew of His Majesty's ship                      , the captors of the said ship                      , in answer to the petition of the claimants, says as follows:—

1. The said ship                      and her cargo were taken as prize and brought in for adjudication by the captors under the circumstances hereinafter described.

2. On the                      day of                      , His Majesty's ship                      was cruising off                      , when the said ship                      came into sight and was signalled and duly boarded by a boat from the                      , and the ship papers and documents and the cargo of the                      were duly inspected and examined.

3. Upon one of the bulkheads, and on one of the boats of the said ship                      , was found a name (the                      ), which was not the present name of the ship, and the name of the port of                      , which is in enemy territory, and upon inquiry of the master of the said ship, it appeared that the said ship immediately prior to the purchase by her present owners and to the existing war, had been owned by                      , a firm carrying on business at the said port of                      , in enemy territory, and that the said master had been in command of the said ship whilst she belonged to the said firm.

4. On receiving such information, the captors brought in the said ship for adjudication upon the suspicion that the sale and transfer of the said ship to the present alleged owners was not *bonâ fide*, and that she still belonged to her former enemy owners.

5. The transfer and assignment of the shares in the said ship by C.D. to the claimant E.F. in the petition alleged took place as therein alleged, but at the time of such transfer the said C.D. was a member of the said firm of



carrying on business as aforesaid, and the transfer and assignment of the said shares was made and executed by the said C.D. as agent of the said firm, and was a mere colourable and fraudulent transfer to cover the enemy character of the said ship, and the said ship at the time of capture remained the property, and was navigated for the account and at the risk of the said firm of , and was in fact enemy property.

*(If the cargo or any part thereof was enemy property, allege it, stating the alleged ownership thereof; or if the cargo or any part thereof was contraband, allege it.)*

6. Save as aforesaid the respondents deny all and every the allegations in the petition contained.

And the said G.H. prays the Judge to pronounce that the said ship (and her cargo) were at the time of capture property of enemies of the Crown of Great Britain, or otherwise liable to condemnation, and to condemn the same as lawful prize to the captors, or to pronounce for just cause of capture.

(Signed)

Y.Z.,

Counsel (or Party).

Delivered this            day of            .

## (ii) PLEADINGS IN PRIZE SALVAGE.

### *Petition alleging Special Difficulty or Danger.*

*(Heading and Title as in No. 1.)*

Writ issued            , 19   .

### *Petition.*

G.H., solicitor for A.B., commander, and the officers and crew of His Majesty's ship            , the recaptors of the above-named ship, the plaintiffs (or as the case may be), says as follows:—

1. The recaptors are the commander, officers and crew of His Majesty's ship            , which is a cruiser of the second class (or as the case may be) armed with            , and carrying a crew of            hands all told, and fitted with engines of            horse-power effective.

2. On the            day of            , at about 11 a.m., His Majesty's said ship was proceeding from            to            in pursuance of her instructions to cruise off the coast of            and to assist

and protect British vessels whilst passing such coast. At such time as aforesaid it was blowing a heavy gale from the                      and the weather showed no signs of improvement.

3. Whilst proceeding as aforesaid, those on board the                      sighted a steamship, appearing to be a British mail steamer, steaming to the                      on about an opposite course to the                      . Signals were at once made to the said steamship, which proved to be the                      of                      but no answer was made, and although a gun was fired, the                      altered her course and proceeded in towards the coast of                      , apparently making for the port of                      in enemy's territory.

4. The recaptors having thereon reason to believe that the                      was in possession of the enemy, immediately altered the course of the                      and chased the                      , gradually gaining upon her.

5. After                      hours' chase the                      and the                      had come within 10 miles of the coast of                      , and the                      was about half-a-mile astern of the said                      . At this time it was seen that an enemy war ship was coming out of the said port of                      , and thereupon extra steam was raised on the                      and she succeeded in getting between the said                      and the entrance to the said port, and forced her to alter her course to seaward.

6. The said enemy war ship, which proved to be the                      of                      guns, and to be carrying a crew of                      hands, came on, and with the assistance of some torpedo boats which were following her engaged the                      , but after a fierce engagement, lasting about half-an-hour, the said enemy war ship was beaten off and returned to the port of                      with the torpedo boats, whereupon the said                      surrendered to the recaptors, and the prize crew in charge of her having been taken on board the                      , and a prize crew from the                      having been put on board the                      , the two vessels in company proceeded towards                      and the                      was brought in safety into                      , where she now lies.

7. At the time of the said engagement, His Majesty's said ship was close to the island of                      , and owing to the gale and the dangerous nature of the coast

“ ”

she ran great risk of being driven on the rocks in manoeuvring during the said engagement, and the lives of the recaptors were thereby exposed to great risk and danger. In the said engagement the                      had men killed and                      men wounded, including officers.

8. By reason of the premises the                      and her cargo were saved from condemnation as prize to the enemy under circumstances of special difficulty and danger.

The said *G.H.* prays the Judge to award to the recaptors one-fourth of the value of the said                      and her cargo, or such other sum as to the Judge shall seem just, and costs.

(Signed)

*W.X.*,  
Counsel (or Party).

Delivered this                      day of

*Answer.*

(*Heading and Title as in No. 1.*)

*Answer.*

*J.K.*, solicitor for *C.D.*, the owner (and claimant) of the said ship, and *E.F.*, owner of the cargo thereof, defendants (*or as the case may be*), in answer to the petition of the recaptors says as follows:—

1. The defendants (*or as the case may be*) admit that the said ship and her cargo were recaptured from the enemy by the recaptors, but deny that the recapture thereof was made under circumstances of special danger or difficulty entitling the recaptors to a larger part of the value of the said ship and cargo than one-eighth part.

2. The defendants (*or as the case may be*) do not admit that His Majesty's said ship                      was at the time of such recapture engaged in protecting British ships as alleged. At the said time, His Majesty's said ship was engaged, in conjunction with other vessels, in watching the said port of                      and in endeavouring to intercept and capture the said enemy's ship of war the                     , and for such purpose endeavouring to entice her out of the said port and bring about an engagement with her, and the fact that the said mail steamer the                      made for such port in fact brought about the engagement so wished for and intended, and such engagement was not

brought about and did not happen merely for the purpose of the recapture of the said ship, but took place in the ordinary course of duty and under the express instructions given to His Majesty's said ship.

The said *J.K.* prays the Judge to pronounce that the recaptors are entitled to one-eighth of the value of the said ship and her cargo, and no more, and to condemn the recaptors in the costs of and occasioned by their claim for a larger sum.

(Signed)

*Y.Z.*,  
Counsel (or Party).

Delivered this                      day of

(iii) PLEADINGS IN JOINT CAPTURE OR RECAPTURE.

O. VII.  
O. XXXII, r. 1.  
Naval Prize  
Act, 1864, sec.  
36.

*Petition.*

(*Heading and Title as in No. 1.*)

Writ issued                      , 19

*Petition.*

*J.K.*, solicitor for the plaintiffs (*or as the case may be*),  
says as follows :—

1. The plaintiffs (*or as the case may be*) are the commander, officers, and crew of His Majesty's ship . . .
2. On the                      day of                      , His Majesty's said ship sailed in company with and under the order of His Majesty's ship                      , and under such order and in such company was cruising off the coast of                      (*or describe position at the time*).
3. About (*state hour*) on the said day, a steamship was sighted bearing about                      , and signals were made by His Majesty's ship                      to chase, and His Majesty's said ships both steamed after the said steamship.

(*Set out in separate paragraphs the circumstances founding a right of joint capture or joint recapture, commencing by adapting the above paragraphs to the facts of the case, and conclude :*)

And the said *J.K.* prays that the Judge will pronounce that His Majesty's said ship                      is a joint captor

(or recaptor) of the said ship (and her cargo),  
and as such entitled to share therein.

Delivered this                      day of

(Signed)

W.X.,

Counsel (or Party).

*Answer.*

(Heading and Title as in No. 1.)

*Answer.*

G.H., solicitor for the defendants (or as the case may be), in answer to the petition of the plaintiff (or as the case may be), says as follows :—

1. The defendants (or as the case may be) are the commander, officers, and crew of His Majesty's (or the) ship

2. About 7 a.m. [set out in short paragraphs the facts upon which the defendants (or as the case may be) rely to show that they were the sole captors].

3. The defendants (or as the case may be) deny that the plaintiffs (or as the case may be) were in sight at the time of the said capture (or recapture) [or, assisted in making the said capture (or recapture), or as the case may be].

And the said G.H. prays that the Judge will pronounce that the prize was taken solely by the

(defendants' ship) and that the (plaintiffs' ship) was not aiding, [or that the (plaintiffs' ship) was not present, or in sight of] or adding to the encouragement of the said capture (or recapture) or the terror of the enemy, and was not acting in concert with the (defendants' ship) in the said chase, or assisting in the said capture (or recapture).

(Signed)

Y.Z.,

Counsel (or Party).

Delivered this                      day of

*Admission.*

(Heading and Title as in No. 1.)

*Admission.*

I, G.H., solicitor for the defendants (or as the case may be) in the above cause, admit that His Majesty's ship

and the commander, officers and crew thereof (*or such persons as may be entitled*) are entitled to share as joint captors (*or recaptors*) in the ship  
(and her cargo).

Dated this                      day of

(Signed)

G.H.,

*Solicitor.*

(iv) PETITION IN OBJECTION TO REGISTRAR'S REPORT.

G. VII.  
O. XVII,  
r. 12.

(*Heading and Title as in No. 1.*)

, solicitor for the                      , in objection to  
the Registrar's Report, filed in this cause on the  
19                      , says as follows:—

- 1.
- 2.
- 3.

*Set out separately and concisely objections to the Report and  
the grounds thereof.*

Wherefore the                      pray this Honourable Court  
to vary the Report by (*set out as shortly as possible the varia-  
tion required*) and to condemn the                      in the costs  
of this appeal or to make such other or further order as to  
the Court may seem fit.

(Signed by Counsel or Party.)

Filed and delivered this                      day of  
19                      , by (*name and address of solicitors and agents, if any*)  
                    's solicitors.

ANSWER TO PETITION IN OBJECTION TO THE REGISTRAR'S  
REPORT.

(*Heading and Title as in No. 1.*)

, solicitors for the                      , say as follows:—

- 1.
- 2.
- 3.

*State briefly the reason why each ground of objection in the  
petition is inadequate.*

Wherefore the                      pray this Honourable Court  
to confirm the said Report and to condemn the

in the costs of and incident to their objections to the said Report and that further and otherwise right and justice may be administered to the premises.

(Signed by Counsel or Party.)

Filed and delivered, &c.

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No. 14.

O. VIII.

ORDER FOR PARTICULARS.

(Heading and Title as in No. 1.)

Upon hearing                      and upon reading the affidavit  
of                      , filed the                      day of                      ,  
19                      , and

It is ordered that the                      deliver to the  
                    (state name of parties affected) an account  
in writing of the particulars of                      (state matters  
of which particulars are required) alleged in  
(specify the pleading or other document in which the allegations  
are contained) in this cause, and that, unless such particulars  
be delivered within                      days from the date of this  
order, all further proceedings be stayed until the delivery  
thereof (or the said allegations be struck out, or upon such  
other terms as the Court shall think fit), and that the costs of  
this application be

Dated the                      day of                      , 19

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No. 15.

O. VIII.

PARTICULARS.

(Heading and Title as in No. 1.)

The following are the particulars of the allegations con-  
tained in the (Pleading or other document) herein, delivered  
pursuant to the order of the Court dated the  
day of                      , 19                      .

- 1.
- 2
- 3.

Dated the                      day of                      , 19

(Signed)  
or Solicitor for

To

No. 16.

AFFIDAVIT OF DISCOVERY.

O. IX, ss. 2, 3.

(Heading and Title as in No. 1.)

I, *A.B.*, the (plaintiff, claimant, or as the case may be), make oath and say as follows :—

1. I have in my possession or power the documents relating to the matters in question in this cause, set forth in the first and second parts of the first schedule hereto.

2. I object to produce the document set forth in the second part of the said first schedule on the ground that [*state grounds of objection and verify the facts as far as may be*].

3. I have had, but have not now, in my possession or power the documents relating to the matters in question in this cause set forth in the second schedule hereto.

4. The last-mentioned documents were last in my possession or power on [*state what has become of the last-mentioned documents and in whose possession they now are*].

5. According to the best of my knowledge, information, and belief I have not now, and never had, in my possession, custody, or power, or in the possession, custody, or power of my solicitor or agent, or of any other person or persons on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this cause, or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in the said first and second schedules hereto.

SCHEDULE NO. I.

PART I.

[*Set out documents.*]

PART 2.

[*Set out documents.*]

SCHEDULE NO. II.

[*Set out documents.*]

Sworn, &c.

(Signed)

*A.B.*



## No. 17.

O. IX, r. 4.

## NOTICE TO PRODUCE FOR INSPECTION OR TRANSCRIPTION.

*(Heading and Title as in No. 1.)*

Take notice that the (plaintiff, claimant, or as the case may be) requires you to produce for his inspection (or, for transcription by him), on or before the day of \_\_\_\_\_, the following documents :—

[Here briefly describe the documents required to be produced.]

Dated this \_\_\_\_\_ day of \_\_\_\_\_.

(Signed) \_\_\_\_\_ G.H.,  
Solicitor for the plaintiff (or  
as the case may be),

To C.D. (or J.K., solicitor for the)  
defendant (or as the case may  
be).

## No. 18.

O. IX, r. 6.

## NOTICE TO PRODUCE AT HEARING OR ON EXAMINATION OF WITNESSES.

*(Heading and Title as in No. 1.)*

Take notice that you are hereby required to produce and show to the Court at the hearing of (or at the examination of \_\_\_\_\_, witnesses in) this cause all books, papers, letters, copies of letters, and other writings and documents in your custody, possession or power, containing any entry, memorandum or minute relating to the matters in question in this cause, and particularly (*specify or describe documents particularly required*).

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19

(Signed)  
or Solicitor for

To

## No. 19.

O. IX, r. 8.

## NOTICE TO ADMIT.

(i) *Documents.**(Heading and Title as in No. 1.)*

Take notice that the plaintiff A.B. (or as the case may be) in this cause proposes to adduce in evidence the several

documents hereunder specified, and that the same may be inspected by the defendant (*or as the case may be*) his solicitor or agent at \_\_\_\_\_, on \_\_\_\_\_, between the hours of \_\_\_\_\_ and \_\_\_\_\_; and the defendant is hereby required within 48 hours (*or insert such longer time as may be reasonable under the circumstances*) from the last-mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed, or executed, as they purport respectively to have been; that such as are specified as copies are true copies; and such documents as are stated to have been served, sent, or delivered, were so served, sent or delivered respectively; saving all just exceptions to the admissibility of all such documents as evidence in this cause.

Dated this \_\_\_\_\_ day of \_\_\_\_\_.  
(Signed) \_\_\_\_\_ G.H.,

Solicitor for the plaintiff (*or as the case may be*).

To C.D. (*or J.K.*, solicitor for the) defendant (*or as the case may be*).

### Originals.

Description of Documents.	Dates.
(Here briefly describe documents.)	(Here state date of each document.)
1.	
2.	

### Copies.

Description of Documents.	Dates.	Time and mode of service, Delivery, etc.
1.		Sent by general post January 1, 19__.
2.		Served January 15th. 19__ on defendant, by _____ by F. G. _____

(ii) *Facts.**(Heading and Title as in No. 1.)*

Take notice that the plaintiff, *A.B.* (or as the case may be), in this cause requires the defendant (or as the case may be) to admit, for the purposes of this cause only, the several facts respectively hereunder specified; and the defendant (or as the case may be) is hereby required within four days (or such longer time as may be reasonable under the circumstances) from the service of this notice, to admit the said several facts, saving all just exceptions to the admissibility of such facts as evidence in this cause.

Dated this                      day of                      .

*G.H.*,

Solicitor for the plaintiff (or  
as the case may be).

To *C.D.* (or *J.K.*, solicitor for the) defendant (or as the case may be).

The facts, the admission of which is required, are:—

1. That
2. That
3. That

O. IX, r. 8.

No. 20.

## ADMISSION OF FACTS PURSUANT TO NOTICE.

*(Heading and Title as in No. 1.)*

The defendant (or as the case may be) in this cause for the purposes of this cause only, hereby admits the several facts respectively hereunder specified, subject to the qualifications or limitations, if any, hereunder specified, saving all just exceptions to the admissibility of such facts, or any of them, as evidence in this cause.

Provided that this admission is made for the purposes of this cause only and is not an admission to be used against the defendant (or as the case may be) on any other occasion, or by anyone other than the plaintiff (or whoever requires the admission).

Delivered this                      day of                      .

(Signed)

*J.K.*,

Solicitor for the defendant  
(or as the case may be).

To *A.B.* (or *G. H.*, solicitor for the) plaintiff  
(or as the case may be).

Facts admitted.	Qualifications or Limitations, if any, subject to which they are admitted.
1. That, &c.	
2. That, &c.	
3.	3. But not that, etc.
4.	4. But not that, etc.
5.	

No. 21.

WARRANT OF ARREST.

O. XI, r. 2.

(*Heading and Title as in No. 1.*)

George the Sixth, &c. (*as in No. 2.*)

To the Marshal of the (*here fill in the name of the Prize Court.*)

We hereby command you to arrest the ship (aircraft)  
of the port of (registered in)  
and the freight due for the transportation of the cargo now  
or lately laden therein [*or, if both ship (aircraft) and cargo  
to be arrested, and the cargo now or lately laden therein,  
together with the freight due for the transportation thereof,*  
and to keep the same under safe arrest until you shall receive  
further orders from Us.

Witness, &c. (*as in No. 2.*)

Taken out by

No. 22.

AFFIDAVIT TO LEAD WARRANT OF ARREST.

O. X, r. 4.

(*Heading and Title as in No. 1.*)

I, , make oath and say as follows:—

1. I am the owner \*[of sixty-four shares]  
(or master, or as the case may be) of the ship (aircraft)  
, (or cargo, &c.) [*or I am the commander of His Majesty's ship (aircraft)  
or whatever rank, title, or position is held by the deponent.*]

\*Omit in  
the case of  
aircraft.

2. The said ship (aircraft) has been taken as prize and brought into (or seized and is now at) within the jurisdiction of this Court, but has not been delivered up to the Marshal of this Court.

3. [State circumstances, if any, showing probability of ship (aircraft) not remaining within the jurisdiction.]

4. The aid and process (or I am informed and believe that the aid and process) of this Court are required to restrain the said ship (aircraft) from proceeding out of the jurisdiction of this Court (or to enable me to enforce my said claim or to obtain restitution of the said ship (aircraft), or as the case may be).

Sworn, &c.

(Signed)

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No. 23.

l. XI, r. 2.

# COMMISSION OF APPRAISEMENT AND SALE.

(Heading and Title as in No. 1.)

George the Sixth, &c. (as in No. 2).

To the Marshal of the (here fill in the name of the Prize Court), Greeting.

Whereas in a cause for instituted in Our said Court on behalf of (if in personam, add against )

The Judge has ordered the said [state whether ship (aircraft), cargo or part of cargo, as the case may be] to be appraised and sold. We therefore hereby authorize and command you to reduce into writing an inventory of the said [ship (aircraft), &c., as above] and, having chosen one or more experienced person or persons, to swear him or them to appraise the same according to the true value thereof, and, upon a certificate of such value having been reduced into writing, to cause the said (ship, &c., as above) to be sold by public auction for the highest price, not under the appraised value thereof, that can be obtained for the same. And we further command you, immediately upon the sale being completed, to pay the proceeds arising therefrom into Court, and to file the certificate of appraisement signed

by you and the appraiser or appraisers, and an account of the sale signed by you, together with this Commission.

Witness, &c. (as in No. 2).

Commission of appraisement and sale.

Taken out by

(Where appraisement or sale only is ordered the words not required in the above form must be omitted.)

(Where the order is for removal, survey, safe custody, or otherwise, the above form must be adapted accordingly.)

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No. 24.

CERTIFICATE OF APPRAISEMENT.

O. XI, r. 5.

(Heading and Title as in No. 1.)

I, \_\_\_\_\_, Marshal of the (here fill in the name of the Prize Court), do certify that, by virtue of a Commission of \_\_\_\_\_ dated the day of \_\_\_\_\_, 19 \_\_\_\_\_ and issued in this cause, I have chosen \_\_\_\_\_ of \_\_\_\_\_ and \_\_\_\_\_ of \_\_\_\_\_ who are (or who, I am informed and believe, are) two experienced persons and have sworn them to appraise the (ship, aircraft, cargo, part of cargo, &c., as the case may be) according to the true value thereof.

And we the said \_\_\_\_\_ and \_\_\_\_\_ whose names are hereunto subscribed, do certify that by virtue of our said oaths, we have faithfully and justly appraised the said (ship, &c., as above) at the sum of \_\_\_\_\_.

In witness whereof we have hereunto respectively set our hands this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_.

(Signatures of Marshal and Appraisers.)

(Where there are more or less than two appraisers the above form must be altered accordingly.)

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No. 25.

BILLS OF SALE BY MARSHAL.

O. XI, r. 2.

(i) Of Foreign Ship.

Know all men by these presents that I, \_\_\_\_\_ Marshal of the (here fill in the name of the Prize Court), in obedience to and by virtue of a Commission to me directed

under the seal of the said Court, bearing date the  
 , and for and in consideration of the sum of  
 pounds of lawful money of Great Britain (*or as  
 the case may be*) to me in hand at or before the ensealing  
 and delivery of these presents well and truly paid, the same  
 being the highest sum which was bid by  
 at a public auction held on the                      day of  
 one thousand                      , and the receipt of  
 which sum I do hereby acknowledge, have granted, bar-  
 gained, sold, assigned, and set over, unto the said  
 executors, administrators, and assigns, the  
 entirety of the foreign ship called the  
 together with the appurtenances thereto belonging as speci-  
 fied in the inventory herewith, now lying                      :  
 To have and hold the said foreign ship called the  
 and the said appurtenances unto the said                      executors,  
 administrators, and assigns, to                      , their  
 own use and uses, and as                      their own  
 proper goods and chattels, from henceforth for ever. And  
 I, the said                      , Marshal of the said Court,  
 do hereby covenant, promise, and agree, to and with the  
 said                      executors, administrators and assigns  
 in manner following; that is to say, that at the time of en-  
 sealing and delivery hereof, I have, in and by the Commis-  
 sion aforesaid, good right, full power, and lawful authority  
 to grant, bargain, sell, assign, and set over the hereby-  
 bargained premises unto the said                      executors,  
 administrators, and assigns, in manner and form aforesaid.  
 And that the said hereby-bargained premises, and every  
 part thereof, now are and so from henceforth for ever shall  
 be, remain and continue unto the said  
 executors, administrators, and assigns.

In witness whereof I have hereunto set my hand and  
 seal this                      day of  
 in the year of our Lord one thousand

Marshal.

Signed, sealed, and delivered by the said  
 in the presence of

(ii) *Of British Ship.*

Know all men by these presents that I,  
 Marshal of the (*here fill in the name of the Prize Court*), in  
 obedience to and by virtue of a Commission to me directed  
 under the seal of the said Court, bearing date the  
 day of                      , and for and in considera-  
 tion of the sum of                      pounds of lawful money

of Great Britain (*or as the case may be*), to me in hand at or before the ensealing and delivery of these presents well and truly paid, the same being the highest sum which was bid by                      at a public auction held on the                      day of                      one thousand                      , and the receipt of which sum I do hereby acknowledge, have granted, bargained, sold, assigned, and set over, and by these presents do fully, freely, and absolutely grant, bargain, sell, assign, and set over unto the said                      executors, administrators, and assigns, sixty-four sixty-fourth parts or shares, being the entirety of the ship called the                      now lying                      , together with the appurtenances thereto belonging as specified in the inventory herewith, which said ship is more particularly mentioned and described as follows:—

Official No.	Name of ship.	Number, Date, and Port of Registry.



## Number, Date, and Port of previous Registry (if any).

Whether British or Foreign Built.	Whether a Sailing or Steam Ship; and if a Steam Ship, how propelled.	Where Built.	When Built.	Name and Address of Builders.
Number of decks .	Head . . .	Length from fore part of stern, under the bowsprit, to the aft side of the head of the stern-post.	Feet. Tenths.	
Number of Masts .	Framework and description of vessel . . .	Length at quarter of depth from top of weather deck at side amidships to bottom of keel.		
Rigged . . .	Number of bulk-heads . . .	Main breadth to outside of plank.		
		Depth in hold from tonnage deck to ceiling at midships.		
Stern . . .	Number of water ballast tanks, and their capacity in tons .	Depth in hold from upper deck to ceiling at midships in the case of three decks and upwards.		
Build . . .	..	Depth from top of beam amidships to top of keel.		
		Depth from top of deck at side amidships to bottom of keel.		
Galleries . . .	..	Round of beam . . .		
		Length of engine room, if any.		

## PARTICULARS OF DISPLACEMENT.

Total to quarter the depth from weather deck at side  
amidships to bottom of keel tons.  
Ditto per inch immersion at same depth tons.

PARTICULARS OF ENGINES (IF ANY).

No. of Engines.	Description.	Whether British or Foreign made.	When made.	Name and Address of Maker.	No. and kind of boiler or cylinders.	Length of stroke.	N.H.P. I.H.P. Speed of ship.
	Engines. Boilers. Number . Iron or steel Pressure when loaded.		Engines. Boilers.	Engines. Boilers			

PARTICULARS OF TONNAGE.

GROSS TONNAGE.	No. of Tons.	DEDUCTIONS—ALLOWANCE.	No. of Tons.
Under tonnage deck .		On account of space required for propelling power . . . . .	
Closed-in-spaces above the tonnage deck, if any :—		On account of spaces occupied by seamen or apprentices, and appropriated to their use, and certified under the statutory regulations. These spaces are the following, viz. :—	
Space or spaces between deck . . . . .			
Poop . . . . .			
Forecastle . . . . .		On account of space used exclusively for accommodation of master or workers and the boat, the engine and the anchor gear or for keeping the charts, signals, and other instruments of navigation and boatman's stores, and for space occupied by decker engine and boiler, and in case of sailing ships for space used for storage of sails.	
Round house . . . . .			
Other closed-in spaces for machinery, light and air, if any . . . . .		Cubic metres . . . . .	
Gross tonnage . . . . .			
Deductions as per contra . . . . .			
Registered tonnage . . . . .		Total deductions . . . . .	

To have and hold the said ship the said appurtenances unto the said executors, administrators, and assigns to

their own use and uses, and as  
 their own proper goods and chattels, from henceforth for  
 ever. And I, the said Marshal of the  
 said Court, do hereby covenant, promise, and agree, to and  
 with the said executors, administrators,  
 and assigns, in manner following; that is to say that at the  
 time of ensealing and delivery hereof, I have, in and by the  
 Commission aforesaid, good right, full power, and lawful  
 authority to grant, bargain, sell, assign, and set over the  
 said hereby-bargained premises unto the said  
 executors, administrators, and assigns, in manner and form  
 aforesaid. And that the said hereby-bargained premises,  
 and every part thereof now are and so from henceforth for  
 ever shall be, remain and continue unto the said  
 executors, administrators, and assigns.

In witness whereof I have hereunto set my hand and  
 seal this day of in the  
 year of our Lord one thousand

Marshal.

Signed, sealed, and delivered by the said  
 in the presence of

[*Note.—In the above Forms of bills of sale the spaces left blank for the insertion of the names of the buyer or buyers should be filled in with such names in full, followed by the word "his", "her", or "their" (executors, etc.) as the case may be.*]

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## No. 26.

O. XI, r. 3.

### CONTRACT FOR SALE OF A SHIP.

By virtue of a Commission of Sale from the (*here fill in the name of the Prize Court*), the ship called the  
 now lying in

Particulars of which ship's registry are as follows, viz. :—  
 [Set out particulars exactly as in Bill of Sale, No. 25 (ii), *supra*.]

*Is exposed to Sale on the Conditions following :—*

I.—The buyer is to sign the agreement to purchase and to take the said ship, her tackle, apparel, furniture and stores including machinery and appurtenances, with all faults, in the condition in which they lie, without any allowance or abatement for weights, lengths, qualities, quantities, errors of description, or any defects or injuries whatsoever, and neither the age, tonnage description of the ship nor the description

of the machinery, appurtenances, and stores, as expressed in the inventories or printed particulars, are warranted.

- II.—The buyer is immediately to pay to the Marshal, or to his substitute, one part of the purchase-money and the remainder thereof within days in cash, to the said Marshal, and upon such payment of the remainder of the purchase-money he will be put into possession of the said ship, her tackle, apparel and furniture, including machinery and appurtenances as afore-mentioned. But in case of non-payment of the remainder of the purchase-money, within such time, the deposit aforesaid of one part shall be and is hereby declared to be forfeited, and the said ship, her tackle, apparel and furniture, including machinery and appurtenances, may again be exposed to, and sold at public or private sale, and the deficiency, if any, by such re-sale, shall be made good by the defaulter, at this sale, together with the expenses attending such re-sale; and neither the Honourable the Judge, the Marshal, any other officer of the said Court, nor the auctioneers, shall be sued, at law, for the said money paid in part, and forfeited as aforesaid; but the buyer so neglecting shall be liable for all loss, costs and damages which may arise thereby.
- III.—If delivery of the property to an agent is required, such agent must produce the buyer's written authority to that effect, duly signed, and addressed to the Marshal.
- IV.—In order to prevent detention of the ship for non-payment of dock or other dues, the buyer must give three days' notice to the Marshal, or auctioneers, of the day on which he will complete the purchase.
- V.—The buyer (if he requires it) may have the Marshal's bill of sale for the said ship.
- VI.—The ship will be at the risk of the buyer immediately after he receives an order for the delivery thereof.

Lastly.—If any question arises at the auction as to who is the buyer of the said ship, the Marshal, or his aforesaid substitute, is to determine the same. Not less than                      pounds (or dollars, or as the case may be) to be advanced at each bidding.

I do hereby acknowledge to have bought the aforesaid vessel, her tackle, apparel, and appurtenances, under the above conditions at the sum of                      and have paid the sum of                      in part of the purchase-money.

Witness my hand this                      day of  
one thousand nine hundred and                       
Witness

No. 27.

O. XI. r. 5.

# MARSHAL'S ACCOUNTS.

(Heading and Title as in No. 1.)

The Marshal's account sales of the ship (aircraft)  
lying                      sold by public auction  
at                      , on                      the  
day of                      19                      , by virtue of the annexed  
Commission of appraisement and sale, dated the  
day of                      , 19                      :—

Received of being the Gross Proceeds of Sale . . . . .				
Disbursements (as on p. 2).	Disbursements and Fees on Appraisement and Sale.	Other Disbursements and Fees.		
		Total.		
Official Fees (as on p. 3).				

, 19 .

(Signed)

Marshal (or as the case may be),

P.-2.

Disbursements carried to 1st page.	No. of Voucher.	DISBURSEMENTS.					
		On Appraisement and Sale.			Other Payments.		

P.-3.

	FEE.					
	On Appraisement and Sale.			Other Fees.		
On Request of Payment of Proceeds into Court						
On Order for Payment of this Account						
On Attending, Appointing and Securing appraiser						
On Attending Sale of Ship (Aircraft)						
Foundry on Gross Proceeds						
On Attending and Delivering Possession to Purchaser						
Possession of Ship (Aircraft) from the day of per day						
Fees carried to 1st page						

No. 28.

BAIL BOND.

(Heading and Title as in No. 1.)

G. XII, 1.4

Whereas a cause of \_\_\_\_\_  
in the (here fill in the name of the Price \_\_\_\_\_) at \_\_\_\_\_

of \_\_\_\_\_, against the ship (aircraft)  
and her (its) cargo (and against \_\_\_\_\_ intervening).

Now therefore we, \_\_\_\_\_ and \_\_\_\_\_  
hereby jointly and severally submit ourselves to the jurisdiction of the said Court, and consent that if he the said \_\_\_\_\_ shall not pay what may be adjudged against him in the said cause with costs (*or, if for costs only, for costs*), execution may issue forth against us, our heirs, executors, and administrators, goods and chattels, for a sum not exceeding \_\_\_\_\_ pounds.

(Signature of Sureties).

This bail bond was signed by the said \_\_\_\_\_  
and \_\_\_\_\_, the sureties,  
this \_\_\_\_\_ day of \_\_\_\_\_  
Before me,

(To be signed before the Registrar,  
or one of the clerks in the  
Registry, or before a Commissioner for Oaths.)

---

No. 29.

O. XII, r. 4.

#### AFFIDAVIT OF JUSTIFICATION.

(Heading and Title as in No. 1.)

I (*state name, address, and description*), one of the proposed sureties for (*state name, address, and description of person for whom bail is to be given*) make oath and say that I am worth more than the sum of (*state in letters the sum in which bail is to be given*) after the payment of all my debts.  
Sworn, etc.

(Signature of Surety.)

---

No. 30.

O. XII, r. 5.

#### NOTICE OF BAIL.

(Heading and Title as in No. 1.)

Take notice that \_\_\_\_\_, solicitor for \_\_\_\_\_ tenders the under-mentioned persons as bail on behalf of \_\_\_\_\_ (*state name, address, and description of the party for whom bail is to be given*), in the sum of \_\_\_\_\_

to answer judgment in this cause, with costs (or, if for costs only, for costs).

*Names, Addresses, and Descriptions of—*

Sureties.

Referees.  
(if required.)

1.

2.

Dated this

day of

(Signed)

P.Q.,  
Marshal.

No. 31.

O. XII, r. 2.

NOTICE OF OBJECTION TO SURETY.

(Heading and Title as in No. 1.)

Take notice that I object to the sufficiency of (*state name, address, and description of surety objected to*) proposed as a surety in this cause.

Dated the

day of

, 19

To

(Signed.)

No. 32.

RELEASE.

(Heading and Title as in No. 1.)

(i) *On Restitution.*

George the Sixth, etc. (*as in No. 2*).

To the Marshal of the (*here fill in the name of the Prize Court*), Greeting.

Whereas in a cause for \_\_\_\_\_ instituted in Our said Court on behalf of \_\_\_\_\_ against the said ship (aircraft) (*or cargo, etc., or, if in personam, name the party*):

The Judge has ordered the said (*state whether ship, aircraft, cargo, or part of cargo, as the case may be*) to be restored to the claimant \_\_\_\_\_ for the use of the owners thereof (*or as the case may be, following the words of the order*):

Now We do hereby command you to release the said (*ship, etc., as above*) from your custody, possession, or control, and to deliver and restore the same unto the said (*insert name of claimant*) for the use of

O. XIII, r. 1.  
O. XXVII, r. 2.  
O. XXIX,  
rr. 1, 2, 3.



the owners thereof (or otherwise, according to terms of order).

Witness, etc. (as in No. 2).

Release

Taken out by

(ii) *From Arrest.*

(Commencement and recital as in No. (i) and continue as follows :—)

We did command you to arrest the said (*ship, aircraft, cargo, part of cargo, etc.*) and to keep the same under safe arrest until you should receive further orders from Us.

Now We do hereby command you to release the said (*ship, etc., as above*) from the arrest effected by virtue of Our warrant in the said cause, upon payment being made to you of all costs, charges, and expenses attending the care and custody of the property whilst under arrest in that cause,

Witness, etc. (as in No. 2).

Release

Taken out by

---

No. 33.

O. XIII, r. 8.

CERTIFICATE OF RELEASE.

On the	day of	19
the ship, aircraft, etc.,		was released
[absolutely] [on bail in the sum of £		]
[on payment into Court of the sum of £		in
lieu of bail].		

(Signed)

Marshal.

---

No. 34.

O. XIV, r. 1.

NOTICE FOR CAVEAT RELEASE.

(Heading and Title as in No. 1.)

Take notice that I, C.D., (*description of applicant*) in a cause instituted on behalf of (*state name, etc., of claimant etc.*) against the (*state name and nature of property*), apply for a caveat against the release or (*state name and nature of property*).

*(If the person applying for the caveat is not a party to the cause, he must also state his address and an address for service within three miles of the Registry.)*

Dated the \_\_\_\_\_ day of \_\_\_\_\_  
(Signed) \_\_\_\_\_ C.D.

\_\_\_\_\_  
No. 35.

CAVEAT RELEASE.

O. XIV, r. 1.

*(Heading and Title as in No. 1.)*

Caveat entered this \_\_\_\_\_ day of \_\_\_\_\_  
against the release of *(state name and nature of property)*  
by *(state name and address of person entering caveat, and his address for service)*.

On *withdrawal of caveat add*: Caveat withdrawn this  
day of \_\_\_\_\_

\_\_\_\_\_  
No. 36.

NOTICE FOR CAVEAT PAYMENT.

O. XIV, r. 2.

*(Heading and Title as in No. 1.)*

Take notice that I, C.D. *(description of applicant)*, in the above-named cause, apply for a caveat against the payment of any money *(if for costs, add for costs)* out of the proceeds of the sale *(or of the freight)* of the ship *(or as the case may be)* now remaining in Court, without notice being first given to me.

*(If the person applying for the caveat is not a party to the cause, he must also state his address, and an address for service within three miles of the Registry.)*

Dated this \_\_\_\_\_ day of \_\_\_\_\_  
(Signed) \_\_\_\_\_ C.D.

\_\_\_\_\_  
No. 37.

CAVEAT PAYMENT.

O. XIV, r. 2.

*(Heading and Title as in No. 1.)*

Caveat entered this \_\_\_\_\_ day of \_\_\_\_\_  
against the payment of any money *(if for costs add for costs)*  
out of the proceeds of the sale of the ship

(or of the freight of) (or as the case may be) now remaining in Court, without notice being first given to (state name and address of person to whom, and address at which, notice is to be given).

On withdrawal of the caveat add: Caveat withdrawn this day of

---

No. 38.

O. XIV, r. 5.

### NOTICE FOR CAVEAT WARRANT.

(Heading and Title as in No. 1.)

Take notice that I, *C.D.* (*description of applicant*) apply for a caveat against the issue of any warrant for the arrest of (*state name and nature of property*), and I hereby undertake to enter an appearance in any cause for prize salvage that may be commenced in the Court against the said ship (*or, state nature of property*), and within three days after I shall have been served with notice of the institution of the cause, to give bail therein in a sum not exceeding (*state the amount for which the undertaking is given*), or to pay such sum into the Admiralty Registry.

My address for service is

Dated this                      day of

(Signed)                      *C.D.*

---

No. 39.

O. XIV, r. 5.

### CAVEAT WARRANT.

(Heading and Title as in No. 1.)

Caveat entered this                      day of                      against the issue of any warrant for the arrest of (*state name and nature of property*) without notice being first given to (*state name and address of person to whom, and address at which, notice is to be given*), who has undertaken to appear and to give bail in any cause for prize salvage which may have been or may be instituted against the said property in this Court.

On withdrawal of caveat, add: Caveat withdrawn this day of

No. 40.

NOTICE OF WITHDRAWAL OF CAVEAT.

O. XIV, r. 10.

(Heading and Title as in No. 1.)

Take notice that I withdraw the caveat (warrant, release, or payment as the case may be) entered by me in this cause.

Dated this                      day of

(Signed)                      C.D.

---

No. 41.

COMMISSION TO EXAMINE WITNESSES.

O. XV, r. 11.

(Heading and Title as in No. 1.)

George the Sixth, etc. (as in No. 2).

To (state name and address of examiner or commissioner appointed), Greeting.

Whereas in a cause for                      commenced in  
Our said Court on behalf of                      against  
(ship or cargo, etc., or as the case may be) the Judge has ordered  
a commission to be issued for the examination of witnesses  
concerning the truth of the matters at issue in the said  
cause.

We therefore hereby authorize you upon the  
day of                      , 19                      , at  
in the presence of the parties, their counsel or solicitors,  
or in the presence of their or either of their lawfully appointed  
substitutes, or otherwise notwithstanding the absence of  
either of them, to swear the witnesses who shall be pro-  
duced before you for examination in the said cause, and  
cause them to be examined, and their depositions to be  
reduced into writing. We further authorize you to adjourn,  
if necessary, the said examinations from time to time and  
from place to place, as you may find expedient. And We  
command you, upon the examinations being completed, to  
transmit the depositions and the whole proceedings had  
and done before you, together with this commission, to the  
Registry of Our said Court.

Witness, etc. (as in No. 2).

Commission to examine

witnesses.

Taken out by

## No. 42.

## REQUEST.

O. XV, r. 11.

To the President and Judges of (or as  
the case may be).

Whereas a cause is now pending in the (*here fill in the name of the Prize Court*), in prize and the said cause is instituted on behalf of His Britannic Majesty for the condemnation of the ship and her cargo (*or as the case may be*) as prize, and the said ship and cargo (*or as the case may be*) is claimed by C.D., a subject of (or, and the said cause is instituted for the recovery of prize salvage *or* to establish a claim of joint capture by E.F. against A.B.)

And whereas it has been represented to the said Court that it is necessary for the purposes of justice, and for the due determination of the matters in dispute in the said cause, that the following persons should be examined as witnesses upon oath touching such matters, that is to say :

T.U., of

W.X., of

and Y.Z., of

And it appearing that such witnesses are resident within the jurisdiction of your honourable Court.

Now, I , President (or, one of the Judges,  
*as the case may be*) of the said (*here fill in the name of the Prize Court*), have the honour to request that for the reasons aforesaid and for the assistance of the Court you as the President and Judges of the said (*here fill in the name of the Court to which the request is addressed*), or some one or more of you, will be pleased to summon the said witnesses [and such other witnesses as the said C.D. or his agents may humbly request you in writing so to summon] to attend at such time and place as you shall appoint before some one or more of you, or such other person as according to the procedure of your Court is competent to take the examination of witnesses and that if due notice has before such time appointed been given of such examination to the agent acting on behalf of His said Majesty (*or as the case may be*) in this matter, you will cause such witnesses to be examined upon the interrogatories which accompany this letter of request (*or viva*

voce) touching the matters in question in this cause in the presence of the agents of the parties, or such of them as shall, on due notice given, attend such examination.

And I further have the honour to request that you will be pleased to cause the answers of the said witnesses to be reduced into writing, and all books, letters, papers, and documents produced upon such examination to be duly marked for identification, and that you will be further pleased to authenticate such examination by the seal of your tribunal, or in such other way as is in accordance with your procedure, and to return the same together with such request in writing, if any, for the examination of other witnesses through His Majesty's Secretary of State for Foreign Affairs (or His Majesty's Secretary of State for the Colonies, or the governor of ) for transmission to the said (here fill in the name of the Prize Court).

---

(Signed)

President (or Judge of the Probate, Divorce,  
and Admiralty Division of the High  
Court of Justice of England  
or as the case may be).

[Note.—If the request is directed to the High Court in India it should be transmitted direct and the concluding sentence of the form altered accordingly.]

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No. 43.

### RETURN TO COMMISSION TO EXAMINE WITNESSES.

G. XV, r. 11.

(Heading and Title as in No. 1.)

I, R.S. the (examiner or) commissioner named in the commission hereto annexed, bearing date the day of , hereby certify as follows :—

(1) On the day of I opened the said commission at , and in the presence of (state who were present, whether both parties, their counsel, or solicitors, or as the case may be), administered an oath to and caused to be examined the under-named witnesses who were produced before me on behalf

of the \_\_\_\_\_ to give evidence in the above-named cause, viz. :—

(Here state names of witnesses.)

(2) On the \_\_\_\_\_ day of \_\_\_\_\_ I proceeded with the examinations at the same place (or, if not, state where) and in the presence of (as above) administered an oath to and caused to be examined the under-named witnesses who were produced before me on behalf of \_\_\_\_\_, to give evidence in the said cause, viz. :—

(State names of witnesses.)

(3) Annexed hereto is the evidence of all the said witnesses certified by me to be correct.

Dated this \_\_\_\_\_ day of \_\_\_\_\_

(Signed) R.S.,

Examiner or Commissioner.

---

No. 44.

O. XVII, r. 6.

#### REGISTRAR'S REPORT AND REASONS.

(Heading and Title as in No. 1.)

Whereas the damages occasioned to the claimant (or as the case may be) by reason of the (capture, seizure, detention, etc.) of the ship (aircraft) (or cargo, etc.) have been pronounced for by the Court (and whereas such decree has been affirmed by His Majesty in Council), subject, however, to a reference to the Registrar (assisted by merchants) to assess the amount thereof.

Now I do hereby report that I have with the assistance of (state names and descriptions of assessors, if any) examined the claim filed on behalf of \_\_\_\_\_ and having, on the \_\_\_\_\_ day of \_\_\_\_\_, heard the evidence of witnesses (and also what was urged by counsel on both sides) I find that there is due to the \_\_\_\_\_ on respect of \_\_\_\_\_ claim the sum and interest in the schedule hereto annexed.

The \_\_\_\_\_ are entitled to the costs of proving their claim (or as the case may be).

(Signed) N.O.,

Registrar

Dated this \_\_\_\_\_ day of \_\_\_\_\_

SCHEDULE annexed to the foregoing report.

No.	—	Claimed.			Allowed.		
1	} Here state as briefly as possible the several items of the claim with the amount claimed and allowed on each item in the columns for figures opposite the item.						
2							
3							
4							
&c.							
	Total						

With interest thereon from the \_\_\_\_\_ day of \_\_\_\_\_  
 , at the rate of \_\_\_\_\_ per cent. per annum  
 until paid.

(Signed)

N.O.,  
 Registrar.

No. 45.

O. XVII, r. 7.

ORDER CONFIRMING REGISTRAR'S REPORT.

(Heading and Title as in No. 1.)

The President (or Judge) having heard counsel (or solicitors) for (insert the names and descriptions of the parties heard) confirmed the Registrar's Report herein.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

No. 46.

O. XVII, r. 9.

NOTICE OF OBJECTION TO REGISTRAR'S REPORT.

(Heading and Title as in No. 1.)

Take notice that the \_\_\_\_\_ object to the Registrar's report herein.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

's Solicitors.

To

Solicitors for

No. 47.

NOTICE OF MOTION.

(Heading and Title as in No. 1.)

Take notice, that the Court will be moved on \_\_\_\_\_ day, the \_\_\_\_\_ day of \_\_\_\_\_.

O. XVII, r. 10.  
 O. XX, r. 3.  
 O. XXIV.  
 O. XXV, r. 2.



19 , at o'clock in the noon,  
 or so soon thereafter as counsel can be heard, by  
 that  
 Dated the day of , 19 .  
 (Signed) of  
 Agent for  
 of . Solicitor  
 for the  
 To .

O. XX. r. 1.

No. 48.

SUMMONS.

*(Heading and Title as in No. 1.)*

Let *A.B.* attend before the Judge (or Registrar) in  
 chambers at , on the day  
 of at o'clock in the noon,  
 to show cause why

Dated this day of

This summons was taken out by  
 Solicitors for the

To ,  
 Solicitors for the

O. XXI, r. 2.

No. 49.

HEADING AND JURAT TO AFFIDAVIT.

No.

In the *(here fill in the name of the Prize Court).*

*(If sworn before a cause has been instituted, the above heading must be omitted.)*

In Prize.

The

I, , *(describe capacity of deponent), (if a cause has been instituted, say in the above-named cause), make oath and say as follows:—*

1.

2.

(a) Sworn at this day of  
 , *(if by interpretation, add by the*

*(a) Where there are two or more deponents : if all the deponents are not sworn at the same time then a separate jurat must be written for each occasion on which the oath is administered. If both or all are sworn at the same time, the jurat should run: Sworn by both (or all) the abovenamed deponents at, &c.*

interpretation of *C.D.*, who was previously sworn that he was well acquainted with the English and languages, and that he would faithfully interpret this affidavit).

Before me,

*R.S.* (give name, rank, and authority  
of person before whom the  
affidavit is sworn).

This affidavit is filed on behalf of

---

No. 50.

O. XXII, c. 2.

OATHS.

(These oaths should be said or repeated after the officer administering the oath.)

(i) *Oath to be Administered to a Witness.*

I swear by Almighty God that the evidence given by me shall be the truth, the whole truth, and nothing but the truth.

(ii) *Oath to be Administered to a Deponent.*

I swear by Almighty God that this is my name and handwriting, and that the contents of this affidavit are true.

(iii) *Oath to be Administered to Shorthand Writer.*

I swear by Almighty God that I will faithfully report and transcribe the evidence of the witnesses to be produced in this cause.

(iv) *Oath to be Administered to an Interpreter.*

(a) *General Form.*

I swear by Almighty God that I well understand the English and languages and that I will truly interpret and explanation make to the Court and the witness of all such matters and things as shall be required of me to the best of my skill and understanding.

(b) *Before Swearing a Deponent.*

I swear by Almighty God that I well understand the English and languages, and that I have truly, distinctly, and audibly interpreted the contents of

this affidavit to the deponent \_\_\_\_\_, and that I will truly interpret the oath about to be administered unto him.

(Note.—The interpreter need not sign the affidavit.)

O. XXII, r. 5.

No. 51.

# DECLARATIONS IN LIEU OF OATHS.

## (i) *By Witness.*

I solemnly promise and declare that the evidence given by me shall be the truth, the whole truth, and nothing but the truth.

## (ii) *By Deponent.*

I solemnly declare that this is my name and handwriting, and that the contents of this affidavit are true.

O. XXVII.

No. 52.

# ORDER (GENERAL FORM).

(*Heading and Title as in No. 1.*)

(*Insert name of Judge or Registrar and whether in Court or Chambers.*)

Upon hearing (counsel, solicitors or witnesses, as the case may be) and upon reading the affidavit of \_\_\_\_\_  
filed the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_  
and (state all further evidence before the Court).

It is ordered that  
and that the costs of this application be \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

O. XXVII.

No. 53.

# DECREES.

- (i) *On Condemnation of Ship, Aircraft, or Cargo, or Ship and Cargo, or Aircraft and Cargo; where Claim made.*

(*Heading and Title as in No. 1.*)

On the \_\_\_\_\_ day of \_\_\_\_\_  
Before \_\_\_\_\_ President (or Judge).

The President (or Judge) having heard the claim of A.B., claimant of the said ship (aircraft)

(and of the cargo thereof) (or if there is a separate claim for cargo, and of C.D., claimant of the cargo of the said

ship (aircraft) \_\_\_\_\_), and the evidence thereon, and counsel for (insert the names and descriptions of the parties heard), and having been assisted by (insert the names and descriptions of the assessors, if any), referred the said claim (or claims), pronounced the said ship (aircraft) \_\_\_\_\_ (and the said cargo) (or the said cargo) to have belonged at the time of capture and seizure to the enemies of the Crown, and, as such or otherwise, subject and liable to confiscation, and condemned the same (if, on condemnation of ship (aircraft) alone, freight is due, add as also the freight due for the transportation of the cargo lately taken therein) as good and lawful prize, and as taken by His Majesty's ship (aircraft) \_\_\_\_\_, commander, and

ordered the said ship (aircraft) \_\_\_\_\_, to be appraised and sold by the marshal (or if both ship and cargo, or aircraft and cargo, or cargo alone, ordered the said cargo to be unladen and appraised and sold by the marshal). (and if the Judge should give the claimants their costs and expenses, add) but also ordered the costs and expenses of the claimants to be paid out of the proceeds of such sale of ship (aircraft) (or cargo), and referred such costs and expenses to the registrar to ascertain the amount thereof.

(ii) *For Detention.*

O. XXVIII.

[Commencement as in Form (i).]

The President (or Judge), having heard the claim of A.B., claimant of the said ship (aircraft) (and of the cargo thereof) (or as the case may be), and the evidence thereon, and counsel for the Crown and (insert the name and description of the claimant heard), pronounced the said ship (aircraft) \_\_\_\_\_ (and the said cargo)

(or as the case may be) to have belonged at the time of seizure to enemies of the Crown and to have been seized under such circumstances as to be entitled to detention in lieu of confiscation, and ordered the said ship (aircraft) and cargo to be detained by the Marshal until further order is issued by the Court.

(iii) *On Condemnation by Default.*

O. XXIX.

[Commencement as in Form (i).]

The President (or Judge) having heard the evidence and counsel for the (Crown or) captors, in default of appearance and claim of (insert owners of ship, aircraft, or as the case may be), pronounced &c. [adapt Form (i).]

O. XXVIII.

(iv) *For Detention on Condemnation by Default.*[ *Commencement as in Form (i).* ]

The President (or Judge) having heard the evidence and counsel for the Crown, in default of appearance and claim of [*insert owners of ship (aircraft) or as the case may be*] pronounced the said ship (aircraft) to have belonged at the time of seizure &c. [*as in Form (ii).*]

(v) *On Condemnation of a Ship of War or a Military Aircraft.*[ *Commencement as in Form (i).* ]

The President (or Judge) having heard the evidence and counsel for the Crown (or captors), in default of appearance and claim pronounced the said ship (aircraft) to have belonged at the time of capture and seizure to enemies of the Crown, and, as such or otherwise, subject and liable to confiscation, as having been a ship of war (or military aircraft), and condemned the same \*[together with her tackle, apparel, furniture, stores, arms, and ammunition] as good and lawful prize, [generally reserving the question by whom taken,]† [and also the consideration of prize bounty] [or as taken by His Majesty's ship , commander, and (if head money is given) pronounced and declared that the officers and crew of His Majesty's said ship , (or such of them as are entitled) are entitled to prize bounty as having been present at the taking of the said ship of war (or military aircraft) and that at the beginning of the engagement there were on board the said ship of war persons, and that the amount of prize bounty aforesaid is the sum of ].

\*Omit in the case of captured aircraft.

†Omit the rest of this form in the case of captures by an aircraft.

O. XXXIII.  
Naval Prize  
Act, 1864,  
s. 42.

(vi) *On Condemnation of a Neutral Ship or Aircraft.*[ *Commencement as in Form (i).* ]

The President (or Judge) &c. [*follow Form (i) with the necessary adaptations down to the word "rejected," and continue :*] the said claim (or claims) pronounced the said ship (aircraft) (and the said cargo) (or the said cargo) to be liable to confiscation upon the ground that (*here state the grounds of confiscation*), and condemned the same &c. [*adapt Form (i).*]

(vii) *On Condemnation, where Ship (Aircraft) has been destroyed.*

[ *Commencement as in Form (i).* ]

The President (or Judge) &c. [ *follow Form (i) with the necessary adaptations down to the word "commander" and continue :* ] and declared the destruction of the said ship (aircraft) (or cargo, &c.) to have been necessary (*here state the grounds on which the Court held the destruction to be justified*).

(viii) *On Restoration.*

[ *Commencement as in Form (i).* ]

The President (or Judge) having heard the claim of A.B., claimant of the said ship (aircraft) (and of the cargo thereof) [ *or, if there is a separate claim for cargo, and of C.D., claimant of the cargo of the said ship (aircraft)* ] and the evidence thereon, and counsel for (*insert names and descriptions of the parties heard*), and having been assisted by (*here state names and descriptions of assessors, if any*) admitted the said claim (or claims), pronounced the said ship (aircraft) (and cargo) (or the said cargo) to have belonged as claimed, and decreed the said ship (aircraft) (*if the freight is due, with freight and expenses to be a charge on the cargo*) (together with the said cargo) to be restored to the claimants for the use of the owners thereof [ *on payment of the captors' expenses or and condemned the captors (insert name or names) in the costs and damages sustained by the owners of the said ship (aircraft) and of the said cargo (or of the said cargo) by reason of the capture and detention thereof by* and referred the amount of such costs and damages to the Registrar to report thereon ].

(ix) *Condemning Ship (Aircraft) and Restoring Cargo.*

[ *Commencement as in Form (i).* ]

The President (or Judge) having heard, &c. [ *adapt Form (i)* ], pronounced the said ship (aircraft) to have belonged at the time of capture and seizure thereof to enemies of the Crown of Great Britain, and, as such or otherwise, subject and liable to confiscation, and condemned the same (as also the freight due for the transportation of the cargo lately taken therein) as good and lawful prize, and as taken by His Majesty's ship (aircraft)

commander, and ordered the said ship (aircraft) to be appraised and sold by the marshal, and pronounced the said cargo to have belonged as claimed and decreed the said cargo to be restored to the claimant for the use of the owners thereof (upon payment of the captors' expenses, and upon payment of the freight due for the transportation of the said cargo, and referred the amount of such freight to the Registrar to report thereon).

(x) *Restoring Ship (Aircraft) and Condemning Cargo.*

[ *Commencement as in Form (i).* ]

The President (or Judge) having heard, &c. [ *adapt Form (i)* ], admitted the claim for the said ship (aircraft) , and pronounced the said ship (aircraft) to have belonged as claimed, and decreed the said ship (aircraft) to be restored to the claimant for the use of the owners thereof (if freight is due, and pronounced freight and expenses to be due upon the cargo, of the said ship) (aircraft), and rejected the said claim for the said cargo, and pronounced the same to have belonged, at the time of the capture and seizure thereof, to enemies of the Crown of Great Britain, and, as such or otherwise, subject and liable to confiscation, and condemned the same [ *as in Form (i)* ], and ordered the said cargo to be unladen and appraised, and sold by the marshal.

(xi) *Restoring Neutral Ship (Aircraft) and Condemning Cargo.*

[ *Commencement as in Form (i).* ]

The President (or Judge) having heard, &c. [ *adapt Form (x) and proceed* ] and rejected the said claim for the said cargo (if part of cargo only condemned, describe the part condemned and say being part of the said cargo) and pronounced the same to be contraband (or as the case may be) and, as such or otherwise, subject and liable to confiscation, and condemned the same [ *as in Form (i)* ], and ordered the said cargo (or the said part of the said cargo) to be unladen and appraised, and sold by the marshal.

Naval Prize  
Act, 1864,  
s. 2.

(xii) *Condemnation as Droit of Admiralty.*

[ *Commencement as in Form (i).* ]

The President (or Judge), having heard, &c. [ *adapt Form (i) to words "good and lawful prize," and proceed* ] and as droits and perquisites of His Majesty, in His

Office of Admiralty, seized by the officers of His Majesty's Customs, at the port of \_\_\_\_\_  
as taken by the non-commissioned ship \_\_\_\_\_  
the officers and crew of the non-commissioned ship \_\_\_\_\_,  
as the case may be, and conclude as in Form (i)  
or as required).

(xiii) *In Prize Salvage.*

G. XXX.  
*Salvage Prize*  
*Act, 1864,*  
*s. 16.*

*Where Ship is brought in and remains under Arrest.*

[ *Commencement as in Form (i).* ]

The President (or Judge), having heard the claim and evidence thereon, and counsel, on both sides, and having been assisted by (*here state the names and descriptions of assessors, if any*), admitted the claim of A.B., the claimant of the said ship (aircraft) (and her cargo), pronounced the said ship (aircraft) (and her cargo) to have belonged to subjects of His Majesty (or to His Majesty the King of *state style and title of the allied Government*, and his subjects), and to have been taken from them by the (*state name of enemy nation*), and retaken by His Majesty's ship (aircraft)

\_\_\_\_\_, commander, and decreed the same to be restored to the claimants for the use of the former owners thereof (or of his said Majesty, *name of allied state*, and his subjects, the former owners thereof) on payment of one-eighth part (or *such other part as the Judge may determine*) of the value of the said ship (aircraft) [or the cargo of the said ship (aircraft)], to the recaptors. The President (or Judge) further decreed that the costs of the recaptors of and incidental to this cause should be paid by the claimants (or *insert such other order as to costs as the Judge may make*). The President (or Judge) further ordered and directed that the said value should be ascertained by appraisement of the said ship (aircraft) [or the cargo of the said ship (aircraft)] by the marshal, and decreed that in default of payment by the claimant of the said part of the said value so ascertained as aforesaid (and the said costs) within \_\_\_\_\_ days after the return of the said appraisement by the marshal, the said ship (aircraft) [or the cargo of the said ship (aircraft)] should be sold by the marshal, and the proceeds of such sale paid into Court, and that the said part (and the said costs) be paid to the recaptors out of the said proceeds.



O. XXX, r. 3.

(xiv) *In Prize Salvage.**Where Value Sworn or Agreed.*[ *Commencement as in Form (i).* ]

The President (or Judge), having heard, &c. (*follow last preceding decree down to "on payment of" and proceed*) the sum of , being one-eighth part (or such other part as the Judge may determine) of the value of the said ship (aircraft), as proved by the owner and accepted by the recaptors, and approved by the Court, (or as agreed between the owner and the recaptors and approved by the Court).

The President (or Judge) further decreed that the cost of the recaptors of and incidental to this cause should be paid by the claimant. He further decreed that in default of payment by the claimant of the said sum of , and the said costs within six days, the said ship (aircraft) should be appraised and sold by the marshal, and the proceeds of such sale paid into Court, and that the said sum of , and the said costs be paid to the recaptors out of the said proceeds.

O. XXX.

(xv) *In prize Salvage.**Where Ship (Aircraft) restored but Cargo condemned.*[ *Commencement as in Form (i).* ]

The President (or Judge), having heard the claim, and evidence thereon, and counsel [ &c. as in Form (i) ], rejected the claim of A.B., the claimant of the cargo of the said ship (aircraft) and pronounced the same to have belonged [ &c. as in Form (i) ], and condemned the same as taken by His Majesty's ship (aircraft) , commander, and further pronounced that freight and expenses are due to the said ship (aircraft) in respect of the said cargo, and ordered that such freight and expenses should be a charge on the said cargo; admitted the claim of C.D., claimant of the said ship (aircraft); pronounced the said ship (aircraft) to have belonged, &c. (*as in Form (xiii) down to "on payment of," and proceed*) of one eighth part (or as the case may be) of the value of the said ship (aircraft) and of the said freight (*if the value has to be ascertained, continue as in Form (xiii), and proceed*) and referred the question of freight to the registrar to ascertain the amount thereof.

[*Note.*—In cases where a sale of ship (aircraft) or cargo takes place, and the Judge directs the costs and expenses of all parties to be paid out of the value, the foregoing decrees can be adapted by inserting words to the following effect: "On payment of one-eighth part of the value of the said ship (aircraft) or cargo, after deducting therefrom the costs and expenses of all parties."}]

(xvi) *In Prize Salvage.*

O. XXX.  
C. XII.

*Where Ship (Aircraft) is brought in and released on Bail.*

[*Commencement as in Form (i).*]

The President (or Judge), having heard the claim, and the evidence thereon, and counsel on both sides, and, having been assisted by (*here state the names and descriptions of assessors, if any*) pronounced due and awarded to the recaptors, the sum of , being one-eighth part (*or such other part as the Judge may determine*) of the appraised value of the said ship (aircraft) (*or of the estimated value of the said ship (aircraft) as agreed on between the claimant and owner and the recaptors, and approved by the Court*) and further decreed that the cost of the captors of and incidental to this cause should be paid by the claimant, and condemned the claimant and his bail in the said sum of , and the said costs.

(xvii) *In Prize Salvage.*

O. XXX. r. 2.  
Naval Prize  
Act 1804,  
s. 41.

*Where the Ship (Aircraft) has been allowed to prosecute her Voyage.*

[*Commencement as in Form (i).*]

The President (or Judge), having heard the evidence and counsel on both sides, and having been assisted by (*here state the names and descriptions of assessors, if any*), pronounced due and awarded to the recaptors, the sum of , being one-eighth part (*or such other part as the Judge may determine*) of the value of the said ship (aircraft) as proved by the owners, and accepted by the recaptors, and approved by the Court (*or of the estimated value of the said ship (aircraft) as agreed on between the owner and the recaptors, and approved by the Court*), *or as ascertained by appraisement of the marshal (as the case may be)* and further decreed that

the costs of and incidental to this cause should be paid by the owner, and condemned the said ship (aircraft) (and cargo) in the said sum of \_\_\_\_\_, and the said costs; ordered and directed the said ship (aircraft) to be appraised (*if not already appraised*) and sold by the marshal, and the said sum of \_\_\_\_\_ and costs to be paid to the recaptors out of the proceeds of such sale but ordered and directed that if the said owner should pay the said sum of \_\_\_\_\_ and costs within \_\_\_\_\_ days from the date hereof, the said ship (aircraft) (and cargo) should be released to the said owner [*or if the ship (aircraft) has not been arrested*], condemned the said owner in the said sum of \_\_\_\_\_, and the said costs, and ordered him to pay the same, *or* ordered and directed a warrant to issue for the arrest of the said ship (aircraft) (and cargo).

O. XXXII,  
r. 8.

(xviii) *In Joint Capture.*

*Pronouncing on Condemnation for or against Title to Share.*

[*Commencement as in Form (i).*]

The President (*or Judge*), having heard the claim, and the evidence thereon, and counsel for the claimants *A.B.*, &c., and for the captors *C.D.*, &c., and for the alleged joint captors *E.F.*, &c., and having been assisted by (*here state names and descriptions of assessors, if any*) rejected the said claim; pronounced the said ship (aircraft) \_\_\_\_\_ to have belonged at the time of capture and seizure thereof to enemies of the Crown of Great Britain, and, as such or otherwise, subject and liable to confiscation; pronounced for (*or against*) the title of the said *E.F.*, &c., to share as joint captors of the said ship (aircraft), and condemned the said ship (aircraft) (as also the freight due for the transportation of the cargo lately laden therein, *if any*) as good and lawful prize, and as taken by His Majesty's ship

[*name of ship of original captors, and if the title of the joint captors is pronounced for, add, jointly with His Majesty's ship (name of ship of joint captors)*], (and further decreed that the costs of the said *E.F.*, &c. (*or the said C.D.*, &c.) of \_\_\_\_\_ be paid by the said *C.D.*, &c., *or E.F.*, &c.).

The President (*or Judge*) further ordered the said ship (aircraft) \_\_\_\_\_ to be appraised and sold by the marshal.

(xix) *In Joint Capture.*

O. XXIII.

*On Condemnation, reserving Question, by whom taken.*

[Commencement as in Form (i).]

(Proceed as in last preceding Form down to the words "liable to confiscation," and continue) and condemned the said ship (aircraft) (as also the freight due for the transportation of the cargo lately laden therein, *if any*) as good and lawful prize, but reserved the question by whom taken. The President (or Judge) further ordered the said ship (aircraft) to be appraised and sold by the marshal.

(xx) *In Joint Capture.*

O. XXXII.

*Subsequent to Condemnation.*

*Pronouncing for or against Title to Share.*

[Commencement as in Form (i).]

The President (or Judge), having heard the claim and the evidence thereon, and counsel on both sides, pronounced against (or for) the title of *E.F.*, &c., to share as joint captors of the said ship (aircraft) and condemned the said ship (aircraft) (as also the freight due for the transportation of the cargo lately laden therein, *if any*) as taken by His Majesty's ship \_\_\_\_\_, commander (or as taken by His Majesty's ship \_\_\_\_\_, commander, together with His Majesty's ship \_\_\_\_\_, commander); and he condemned *E.F.*, &c. (or *C.D.*, &c.) in the costs of

(xxi) *In Joint Capture.*

O. XXXIII.

*Before or subsequent to Condemnation.*

*Admitting Petition to Proof, or Dismissing Petition.*

[Commencement as in Form (i).]

The President (or Judge), having read the petition of *A.B.*, and having heard counsel for the petitioner and for the respondent, admitted the said petition to proof (or dismissed the said petition, and condemned the said *A.B.*, in the costs of the respondent).

O. XXXII,  
r. 8.

(xxii) *In Joint Recapture.*

*Pronouncing for Joint Title or Interest.*

[ *Commencement as in Form (i).* ]

The President (or Judge), having heard the claim, and the evidence thereon, and counsel for *A.B.*, &c., the claimants, *C.D.*, &c., the recaptors, and *E.F.*, &c., the alleged joint recaptors, and having been assisted by (*here state the names and descriptions of assessors, if any*), admitted the claim of *A.B.*, &c. (*proceed as in Form (xiii) to the words " of the value of the said ship (aircraft) (or the cargo of the said ship (aircraft) "*), and pronounced the said *E.F.*, &c., to be joint recaptors of the said ship (aircraft) [*or of the cargo of the said ship (aircraft)*], and entitled to share in the said part.

The President (or Judge) further decreed that the costs of the recaptors of and incidental to this cause should be paid by the claimants, and that the costs of *E.F.*, &c., the said joint recaptors, should be paid by (or such order as to costs as the Judge may make).

The President (or Judge) further ordered and directed that the said value should be ascertained by appraisement of the said ship (aircraft) [*or the cargo of the said ship (aircraft)*] by the marshal, and decreed that in default of payment by the claimants of the said part of the said value so ascertained as aforesaid, and of the said costs within days after the return of the said appraisement by the marshal, the said ship (aircraft) [*or the cargo of the said ship (aircraft)*] should be sold by the marshal, and the proceeds of such sale paid into Court, and that the said part and the said costs be paid to the recaptors out of the said proceeds, subject to the right of the joint recaptors to share in the said part.

O. XXXII,  
r. 8.

(xxiii) *In Joint Recapture.*

*Reserving Question to whom Due.*

[ *Commencement as in Form (i).* ]

The President (or Judge, &c.) [*proceed as in last preceding Form to words of the value of the said ship (aircraft), or the cargo of the said ship (aircraft), and then proceed*], reserving the question to whom such salvage is due and further reserving all questions of costs.

(xxiv) *Rejecting Claim of alleged Joint Recaptors and pronouncing for sole Title or Interest.* O. XXXII.  
F. F.

[Commencement as in Form (i).]

[Proceed as in Form (xiii) until the end of the clause decreeing restitution, and continue] and rejected the claim of the said *E.F.*, &c., to share as joint recaptors in the said part (and condemned the said *E.F.*, &c., in the costs of the said *C.D.*, &c., occasioned by the said claim of *E.F.*, &c., to share as joint recaptors).

[The rest of this decree is as in Form (xiii).]

(xxv) *In Prize Bounty.*

O. XXXIII,  
Naval Prize  
Act, 1793,  
ss. 42, 43.

[Commencement as in Form (i).]

The President (or Judge), having heard the notice of motion and the evidence thereon, and having heard counsel for the applicants (*name and describe them*), and for (*any other parties appearing*), pronounced and declared that the said applicants being the (*or some of the*) officers and crew of His Majesty's ship , commander, are entitled to prize bounty as being actually present at the taking (*or destroying*) of the armed ship , belonging at the time of capture (*or destruction*) thereof to an enemy of His Majesty, to wit (the King of , *or as the case may be*), and (*if head money is given*) that at the beginning of the engagement there were on board the said enemy's ship persons, and that the amount of prize bounty aforesaid is the sum of

(xxvi) *In Prize Bounty.*

O. XXXIII.

*On Claim to share as Joint Captors before Title declared.*

[Commencement as in Form (i).]

The President (or Judge) having heard the notice of motion and the petition of , the alleged joint captors, and the answer of the applicants and respondents, and the evidence thereon, and having heard counsel for the several parties, pronounced and declared prize bounty to be due in respect of the taking (*or destroying*) of the armed ship , belonging at the time of capture (*or the destruction*) thereof to an enemy of His Majesty, to wit (the King of , *or as the case may be*), and (*if head money is given*) that at the beginning of the engagement there were on board the said enemy's ship persons, and

that the amount of prize bounty aforesaid is the sum of \_\_\_\_\_, admitted (or rejected) the claim of the petitioners, and further pronounced and declared that the applicants being the (or some of the) officers and crew of His Majesty's ship \_\_\_\_\_, commander (if the claim of the alleged joint captors is admitted) add together with the petitioners, being the (or some of the) officers and crew of His Majesty's ship \_\_\_\_\_, commander, are entitled to the said prize bounty as being actually present at the taking (or destroying) of the said armed ship.

[*Note*.—For decree awarding bounty on condemnation of a ship of war, see Form (v).]

O. XXXIII.

(xxvii) *In Prize Bounty.*

*On Claim to share after Decree for Prize Bounty made.*

[*Commencement as in Form (i).*]

The President (or Judge), having heard the petition and answer read, and the evidence thereon, and having heard counsel for the several parties admitted (or rejected) the claim of the petitioners, and pronounced and declared that the petitioners being the (or some of the) officers and crew of His Majesty's ship \_\_\_\_\_, commander, were (or were not) entitled to share with the officers and crew of His Majesty's ship \_\_\_\_\_, commander, in the prize bounty awarded and declared due by the decree of this Court.

O. XXXIII  
(5).

(xxviii) *In Prize Bounty.*

*Reserving the Question to whom the Bounty is due.*

[*Commencement as in Form (i).*]

[*Proceed as in Form (xxvi) down to the words "the sum of \_\_\_\_\_" inclusive, or as required, and continue :*] but reserved the question as to the persons entitled to such bounty or to share therein.

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No. 54.

O. XXIX, r. 2.

NOTICE OF REQUISITION BY THE CROWN.

(*Heading and Title as in No. 1.*)

Take notice that the Crown desires to requisition [forthwith] the property mentioned in the schedule

hereto which was condemned as prize (or ordered to be detained as the case may be) by the Court on the day of

Dated the                      day of

*Schedule.*

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No. 55.

COMMISSION OF APPRAISEMENT OF PROPERTY REQUISITIONED BY THE CROWN.

(Heading and Title as in No. 1.)

George the Sixth &c. (as in No. 2).

To the Marshal of the (here fill in the name of the Prize Court), Greeting.

Whereas a cause for condemnation has been instituted in our said Court in respect of the undermentioned property, and whereas the said property has been condemned as prize (or "ordered to be detained"), and whereas the Crown desires to requisition the said property,

We therefore hereby authorize and command you to reduce into writing an inventory of the said property and, having chosen one or more experienced person or persons, to swear him or them to appraise the same according to the true value thereof and to reduce into writing a certificate of such value. And we further command you to file in the Registry the certificate of appraisement signed by you and the appraiser or appraisers together with this commission.

Witness, &c. (as in No. 2).

Commission of Appraisement.

Taken out by

---

No. 56.

AFFIDAVIT OF VALUE IN A CAUSE OF PRIZE SALVAGE.      O R D E R, &c.

(Heading and Title as in No. 1.)

I, C.D., of                      , one of the owners of the said  
ship (aircraft)                      , make oath and say as  
follows:—

That the value of the said ship (aircraft) is  
or thereabouts, and of the cargo (now on) lying on board  
therein                      , and that the gross value of



the freight earned by the said ship (aircraft) on her voyage in which the salvage services are alleged to have been rendered to her, amounts to the sum of ~~or thereabouts~~, and that the expenses of earning such freight are (set them out).

Sworn, &amp;c.

(Signed)

C.D.

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 No. 57.

G. XXX, r. 2. AGREEMENT OF VALUE OF SHIP (AIRCRAFT), CARGO, AND FREIGHT IN A CAUSE OF PRIZE SALVAGE.

(Heading and Title as in No. 1.)

We, the undersigned, the owners of the ship (aircraft) (or as the case may be), and

the recaptors, the parties to this cause, do hereby agree the ship (aircraft) , and the cargo (now or) lately laden therein, and the freight due for the transportation thereof, being the ship (aircraft), cargo and freight proceeded against in this cause, to have been at the time of the salvage services in question, together of the value of (that is to say) :—

Value of ship (aircraft)	..	..	..
Value of cargo	..	..	..
Value of freight	..	..	..

Dated this

day of

C.D.,

(or Solicitors for) owners.

E.F.,

(or Solicitors for) recaptors.

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 No. 58.

G. XXXV, r.  
11.

CERTIFICATE OF SERVICE.

I certify that a copy of the within was duly served on J.K., the solicitor for the plaintiff (or as the case may be), on the day of

(Signed)

L.M.,

Solicitor (or his clerk for him).

24. 25.

MINUTE ON FILED, Jan: 23, 1945.

• 1933, 1934, 1935, 1936, 1937, 1938, 1939, 1940, 1941, 1942, 1943, 1944, 1945, 1946, 1947, 1948, 1949, 1950, 1951, 1952, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961, 1962, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614,

(Heading and Title as in No. 1, 2)

I. 1.B. (plaintiff) claims that as the owner of the said land, the following documents, etc.,

(Here describe the documents filed.)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_  
(Signed) \_\_\_\_\_ A.B.

No. 40.

MINUTE OF EXAMINATIONS OF WITNESSES.

© 2002, 1

(Heating and T<sub>h</sub> as in No. 1.)

On the \_\_\_\_\_ day of \_\_\_\_\_, President (or Judge).

C.D. (claimant, or as the case may be) produced as witnesses (here state names of witnesses in full), who having been sworn (or as the case may be) were examined orally (or, if by interpretation, add by interpretation of \_\_\_\_\_).

No. 61.

CERTIFICATE OF CONSIGNATION AND SALE OF SHIP (AIRCRAFT). 70 1111 1111.

It is hereby certified that the *(here fill in the name of the Prize Court)*, being duly authorized to take cognizance of and judicially proceed in matters of prize, did, by its order *(or decree)* dated the \_\_\_\_\_ day of \_\_\_\_\_, made in a cause instituted on behalf of His Britannic Majesty for the condemnation of the ship *(aircraft)* \_\_\_\_\_, formerly of the port of *(registered in)* \_\_\_\_\_ in the kingdom *(was the case, may be)* of \_\_\_\_\_, and claimed in the said cause by or on behalf of \_\_\_\_\_ as the owner thereof, condemn the said ship *(aircraft)* as good and lawful prize to His Britannic Majesty and order the said ship *(aircraft)* to be sold by the marshal of the said Court, and that the said ship *(aircraft)* was sold accordingly by the said marshal \_\_\_\_\_ and was by bill of sale *(if the certificate is not for a ship)* \_\_\_\_\_ and upon which this certificate is entered, do and the

day of  
sold and assigned ] to (*insert name of purchaser*).

Issued under the seal of the said Court, this  
day of

(Signed)

N.O.,  
Registrar.

---

No. 62.

G. XLII, r. 4.

#### CERTIFICATE OF SALE OF SHIP (AIRCRAFT).

It is hereby certified that the (*here insert the name of the Prize Court*), being duly authorized to take cognizance of and judicially proceed in matters of prize, did, by its order (*or decree*) dated the day of , made in a cause instituted on behalf of His Britannic Majesty for the condemnation of the ship (aircraft) formerly of the port of (registered in) in the Kingdom (*or as the case may be*) of and claimed in the said cause by or on behalf of as the owner thereof, order, on account of the condition of the said ship (aircraft) [ *or on application made on behalf of the said* , the owner of the said ship (aircraft) (*or with the consent of the said* , the owner of the said ship (aircraft))], the said ship (aircraft) to be sold by the marshal of the said Court; and that the said ship (aircraft) was sold accordingly \*[and was by bill of sale (*if the certificate is endorsed thereon, add upon which this certificate is endorsed*) dated the day of , sold and assigned ] to (*insert name of purchaser*).

\*Omit in the case of aircraft.

Issued under the seal of the said Court, this day of

(Signed)

N.O.,  
Registrar.

---

No. 63.

#### G. XLII, r. 1. CERTIFICATE OF CONDEMNATION AND SALE OF GOODS OR CARGO.

It is hereby certified that the (*here insert the name of the Prize Court*), being duly authorized to take cognizance of and judicially proceed in matters of prize, did, by its order (*or decree*) dated the day of , made in a cause instituted on

behalf of H. B. Britannic Majesty for the condemnation of [describe the goods, giving numbers, weight, description, and marks (if any)] being cargo (or part of the cargo) which was laden on board the ship (aircraft)

at the time of the capture and seizure thereof by His Majesty's ship (aircraft) [insert name of ship] [if the goods did not form part of the cargo of a ship (aircraft), state where and how taken] and which were claimed in the said cause by or on behalf of [insert name of owner]

as the owner thereof, condemn the said goods as good and lawful prize to His Britannic Majesty, and order the said goods to be sold by the marshal of the said Court: and that the said goods were sold accordingly by the said marshal and were under a contract or sold note [if the certificate is endorsed thereon, add upon which this certificate is endorsed] dated the [insert day] day of [insert month] [insert year] purchased by and sold to (insert name of purchaser).

Issued under the seal of the said Court, this [insert day] day of [insert month] [insert year]

(Signed) A.D.,  
Registrar.

No. 61.

# CERTIFICATE OF SALE OF GOODS OR CARGO.

S. XLII. 1.

It is hereby certified that the (here insert the name of the Prize Court), being duly authorized to take cognizance of and judicially proceed in matters of prize, did, by its order (or decree) dated the [insert day] day of [insert month] [insert year], made, in a cause instituted on behalf of His Britannic Majesty for the condemnation of [describe the goods, giving numbers, weight, description, and marks (if any)], being part of the cargo which was laden on board the ship (aircraft) [insert name of ship], at the time of the capture and seizure thereof by His Majesty's ship (aircraft) [insert name of ship] (or, if the goods did not form part of the cargo of a ship (aircraft), state where and how taken] and which were claimed in the said cause by or on behalf of [insert name of owner] as the owner thereof, order, on account of the condition of the said goods [or on application made on behalf of the said [insert name of owner] the owner of the said goods)], the said goods to be sold by the marshal of the said court: and that the said goods were sold accordingly by the said marshal and

were under a contract or sold note (*if the certificate is endorsed thereon, add upon which this certificate is endorsed*) dated the                      day of                      , purchased by and sold to (*insert name of purchaser*).

Issued under the seal of the said Court, this  
day of                      .

(Signed)                      N.O.,  
Registrar.

---

No. 65.

O. XLII, r. 3.

#### CERTIFICATE OF RESTITUTION OF SHIP (AIRCRAFT).

It is hereby certified that the (*here fill in the name of the Prize Court*), being duly authorized to take cognizance of and judicially proceed in matters of prize, did, by its decree dated the                      day of                      , made in a cause instituted on behalf of His Britannic Majesty for the condemnation of the ship (aircraft) [of the port of] [registered in]                      , in the kingdom (*or as the case may be*) of                      , and claimed in the said cause by or on behalf of                      as the owners thereof, admit the said claim on behalf of the said                      , pronounce the said ship to have belonged as claimed, and decree the said ship (aircraft) to be released and to be restored to the claimant for the use of the said                      , the owners thereof.

Issued under the seal of the said Court, this  
day of                      .

(Signed)                      N.O.,  
Registrar.

---

No. 66.

O. XLII, r. 3.

#### CERTIFICATE OF RESTITUTION OF GOODS OR CARGO.

It is hereby certified that the (*here fill in the name of the Prize Court*), being duly authorized to take cognizance of and judicially proceed in matters of prize, did, by its decree dated the                      day of                      , made in a cause instituted on behalf of His Britannic Majesty for the condemnation of [*describe the goods, giving numbers, weight, description, and marks (if*

any) ], being part of the cargo which was laden on board the ship (aircraft) at the time of the capture and seizure thereof by His Majesty's ship (aircraft)

(or if the goods did not form part of the cargo of a ship, state where and how taken) and which were claimed in the said cause by or on behalf of as the owners thereof, admit the said claim on behalf of the said , pronounce the said goods to have belonged as claimed, and decree the said goods to be restored to the claimant for the use of the said , the costs thereof.

Issued under the seal of the said Court, this day of

(Signed)

N.O.

Reg. 1111.

## APPENDIX B.

### FEES TO BE TAKEN IN PRIZE MATTERS BY THE COURT AND ITS OFFICERS.

#### *Summonses, Notices, Commissions, and Warrants.*

1. On sealing a writ for commencement of a cause . . . . .	£ 1 6
2. On sealing an amended writ for commencement of a cause . . . . .	1 10 0
3. On sealing a subpoena, for each witness . . . . .	0 5 0
4. On sealing or issuing a summons . . . . .	0 1 6
5. On filing a notice to have a reference to the Registrar placed in the list for hearing . . . . .	0 5 0
6. On a notice for the issue of any writ or order under the seal of the Court . . . . .	1 0 0
7. On sealing or issuing a commission to take oaths of affidavits in prize matters (to be paid by the applicant, for each person appointed taker) . . . . .	0 0 6
8. On every other commission or letter of request . . . . .	2 0 0
9. On marking a copy of a petition or writ for service . . . . .	0 1 0
10. On filing a notice to enter a writ, &c. a return . . . . .	0 5 0

#### *Appointments.*

11. On entering an appearance or answering the same, for each person . . . . .	0 2 6
--	-------

#### *Copies.*

12. On a copy of a written deposition of a witness to enable a party to print the same, for each folio . . . . .	0 3 7
13. On examining a written or printed copy, and making, or sealing same as an office copy, for each folio . . . . .	0 1 0

*Copies—contd.*

£ s. d.

- |  |   |   |   |
|--|---|---|---|
| 14. On marking a copy and marking same as an office copy, for each folio . . . . .                 | 0 | 0 | 8 |
| 15. On a copy in a foreign language—the actual cost.   |   |   |   |
| 16. On a copy of a plan, map, section, drawing, photograph, or diagram—the actual cost.            |   |   |   |
| 17. On a printed copy of an order, not being an office or certified copy, for each folio . . . . . | 0 | 0 | 2 |

*Attendants.*

- |  |   |   |   |
|--|---|---|---|
| 18. On any application, with or without a subpoena, for any officer to attend as a witness, or to produce records or documents to be given in evidence (in addition to the reasonable expenses of the officer), for each day or part of a day he shall necessarily be absent from his office . . . . . | 2 | 0 | 0 |
|--|---|---|---|

The officer may require a deposit of stamps on account of any further fees, and a deposit of money on account of any further expenses which may probably become payable beyond the amount paid for fees and expenses on the application, and the officer or his clerk taking such deposit shall thereupon make a memorandum thereof on the application.

*Oaths, &c.*

- |   |   |   |   |
|---|---|---|---|
| 19. On swearing an affidavit or making a declaration [except for the purpose of receipt of dividends from the Paymaster-General], for each person making the same . . . . . | 0 | 2 | 0 |
| 20. And in addition thereto for each exhibit therein referred to and required to be marked . . . . .  | 0 | 1 | 4 |

*Filing.*

- |   |   |    |   |
|---|---|----|---|
| 21. On filing a petition of right . . . . .   | 1 | 10 | 0 |
| 22. For every instrument or document (other than an exhibit, or any instrument or document previously issued from the Registry or the marshal's office) unless otherwise provided . . . . .   | 0 | 5  | 0 |
| 23. On an application to search for an appearance or an affidavit and inspecting the same . . . . .   | 0 | 1  | 0 |
| 24. On an application to search an index, and inspect a pleading, judgment, decree, order, minute, or other record, unless otherwise expressly provided for by any Act of Parliament or this order, for each hour or part of an hour occupied . . . . . | 0 | 2  | 6 |
| 25. Not exceeding one day . . . . .   | 0 | 10 | 0 |

*Examination of Witnesses.*

- |  |   |   |   |
|--|---|---|---|
| 26. On the issue of an order for an examination to be taken before the Judge, Registrar, or examiner, or for letters of request . . . . .                                    | 0 | 5 | 0 |
| 27. For examining witnesses, except by the Judge or Registrar, <i>et cetera</i> voce, per day or part of a day . . . . .   | 2 | 2 | 0 |
|  | 4 | 4 | 0 |
| 28. On an examination of witnesses by any examiner at a greater distance than three miles from the Registry, a reasonable sum for travelling and other expenses in addition. |   |   |   |

*Examination of Witnesses—contd.*

£ s. d.

The officer may require a deposit of stamps on account of fees and a deposit of money on account of expenses which may probably become payable beyond any amount paid for fees and expenses upon the examination, and the officer, or his clerk, taking such deposit shall thereupon make a memorandum thereof and deliver the same to the party making the deposit.

The officer may also require an undertaking, in writing, to pay any further fees and expenses which may become payable beyond the amount so paid and deposited.

29. For the examination of witnesses by the Judge or Registrar, whether by interpretation or not, for each witness . . . . .	1	0	0
30. For preparing affidavits as to ship papers (aircraft papers), for every folio . . . . .	0	2	6
31. For sorting and numbering ship papers (aircraft papers) . . . . .	0	10	0

*Hearing.*

32. On entering or setting down, or re-entering or re-setting down any cause or matter for hearing . . . . .	2	0	0
33. On writing for the attendance of Trinity masters or other assessors on the hearing . . . . .	0	10	0
34. On setting down any petition or a reference . . . . .	0	10	0

*Judgments, Decrees, and Orders.*

On drawing up and entering decrees and orders—

35. If made in Court on the hearing of a cause, or on the hearing of a petition . . . . .	2	0	0
36. If an order of course on a petition of right . . . . .	0	10	0
37. If an order for a commission on a petition of right . . . . .	1	0	0
38. On any other order including a consent or agreement filed pursuant to Order XXIII, and filing same . . . . .	0	10	0
39. On a memorandum to enter an order <i>nunc pro tunc</i> . . . . .	0	5	0

*On References before a Registrar.*

40. On any reference to the Registrar, including examination of witnesses, if any, having regard to the nature and importance of the accounts and other matters, and to the time occupied . . . . .	From 1 1 0 to 15 15 0
40A. If the reference occupies more than one day, for each additional day or part thereof a further fee not exceeding . . . . .	15 15 0
41. If the attendance of one or more merchants is required, for each merchant the same fees as to the Registrar . . . . .	From 1 1 0 to 15 15 0

In cases of great intricacy, or very large amount, occupying more than one full day, larger fees may be taken.

The fees Nos. 40-41 inclusive, shall be paid in the first instance by the party setting down the reference for hearing, as hereinafter provided :



*On References before a Registrar—contd.*

£ s. d.

To the notice mentioned in Order XVII, Rule 3, the party setting down shall affix the stamp for the reference and, if the Registrar shall so require, a deposit in stamps to an amount which in the opinion of the Registrar will cover the reference fees. If any further amount becomes due in respect of the proceedings, such amount shall be paid by the said party on the report of the result of the reference or if no report is made, on the completion of the proceedings on the reference or if not completed a due proportion shall be paid on so much of the proceedings as shall have taken place, the amount to be fixed by the Registrar. Such further amounts shall be paid by stamps impressed upon or affixed to a memorandum stating on what account such fees are paid.

*In the Marshal's Office.*

42. On the execution of a warrant or on taking possession of a ship (aircraft) in pursuance of section 16 of the Naval Prize Act . . . . .	2	0	0
43. On the execution of an attachment, for every person attached . . . . .	1	0	0
44. On the execution of any decree, order, commission, or other instrument, other than those herein provided for, which is required to be executed by a marshal . . . . .	1	0	0
45. On attending, appointing, and swearing appraisers . . . . .	1	0	0
46. On delivering up a ship (aircraft) or goods to a purchaser agreeably to the inventory . . . . .	2	0	0
47. On attending the delivery of cargo, or sale or removal of a ship (aircraft) or goods, per day . . . . .	2	0	0
48. On retaining possession of a ship (aircraft) with or without cargo, the expenses per day in respect of a shipkeeper (aircraft keeper).			

The marshal shall be entitled to his reasonable expenses for travelling, board, and maintenance, in addition to the above fees.

49. On the sale of any ship (aircraft) or goods sold pursuant to a decree or order of the Court, for every £100 or fraction of £100 gross proceeds realised . . . . .	1	0	0
50. On the release of any ship (aircraft), goods, or person from arrest . . . . .	2	0	0

*Taxation of Costs.*

51. On taxing a bill of costs where the amount allowed does not exceed £4 . . . . .	0	2	0
52. Where the amount exceeds £4, for every £2 allowed or a fraction thereof . . . . .	0	1	0

*On Proceedings in the Pay Office of the Supreme Court.*

53. On a certificate of the amount and description of any money, funds, or securities, including the request therefor . . . . .	0	2	0
54. On a transcript of an account for each opening, including the request therefor . . . . .	0	2	0

*On Proceedings in the Pay Office of the Supreme Court—contd.*

	£	s.	d.
55. On a request to the paymaster, Bank of England, the Registrar, or other official for any of the following purposes: paying, lodging, transferring, or depositing money, funds, or securities in Court without an order, or money in addition to the amount directed by an order to be paid in; paying out of Court any money without an order or a certificate of a taxing officer; information in writing in respect of any money, funds, or securities, or any transaction in the pay office.			
56. On a request for information respecting any money, funds, or securities to the credit of any cause or matter contained in any list prepared by the paymaster of causes and matters to the credit of which any money, funds, or securities have not been dealt with during 15 years .	0	2	6
57. On an affidavit for the purpose of paying, transferring, or depositing any money, funds, or securities in Court pursuant to the Trustee Act, 1925 . . . . .	0	1	0
58. On preparing a power of attorney . . . . .	0	5	0

*Miscellaneous.*

59. On a fiat of a Judge . . . . .	0	5	0
60. On signing, settling, or approving an advertisement . . . . .	0	10	0
61. On taking a recognisance or bond whether one or more than one recogniser or obligor, and whether entered into by all at one time or not . . . . .	0	10	0
62. On assignment of a bond . . . . .	0	5	0
63. By a commissioner on taking bail . . . . .	1	1	0
64. On a commitment . . . . .	0	5	0
65. On registering in the Registry a power of attorney for a King's ship generally and a copy thereof for the accountant general of the Navy . . . . .	1	10	0
66. On registering same specially . . . . .	0	10	0
67. On taking accounts by the Registrar in naval prize matters . . . . .	0	5	0
68. On an inspection of the Register of Bail Bonds . . . . .	0	1	0

## APPENDIX C.

### FEES TO BE CHARGED BY AND ALLOWED TO PRACTITIONERS IN PRIZE MATTERS IN THE COURT.

*Writs, Warrants, and Summonses.*

	£	s.	d.
Writ for the commencement of any cause . . . . .	0	6	8
Notice of a writ for service out of jurisdiction . . . . .	0	4	0
Warrant for arrest (including attendance on the marshal) . . . . .	0	10	0
<i>Subpœna ad testificandum</i> or <i>duces tecum</i> . . . . .	0	6	8
<i>Subpœna ad testificandum</i> for any number of persons not exceeding three . . . . .	0	6	8
And if more than four folios, for each folio beyond four . . . . .	0	1	4

*Writs, Warrants, and Summonses—contd.*

	£	s.	d.
Any order or warrant not included in the above . . . . .	0	6	8

These fees include all indorsements and copies for the officer sealing them, and attendances to issue or seal, except where otherwise provided, but not the Court fees.

Summons to attend at Judge's chambers . . . . .	0	3	0
or if special, at taxing officer's discretion, not exceeding . . . . .	0	13	4
Copy for the Judge, or Registrar, when required . . . . .	0	2	0
or per folio . . . . .	0	0	4

*Services, Notices, and Demands.*

Service, or filing in lieu of service, of any writ, summons, warrant, petition, order, or notice on a party who has not entered an appearance, and if not authorised to be served by post . . . . .	0	5	0
---	---	---	---

If served at a distance of more than two miles from the nearest place of business, or office of the solicitor serving the same, for each mile beyond such two miles therefrom, or such reasonable sum for out-of-pocket expenses, and for the time occupied as the taxing officer shall think fit . . . . .	0	1	0
---	---	---	---

Where, in consequence of the distance of the party to be served, it is proper to effect such service through an agent (other than the London agent), for correspondence in addition . . . . .	0	7	0
---	---	---	---

Where more than one attendance is necessary to effect service, or to ground an application for substituted service, such further allowance may be made as the taxing officer shall think fit.

For service out of the jurisdiction such allowance is to be made as the taxing officer shall think fit.

Service (where an appearance has been entered) on the solicitor or party . . . . .	0	2	6
or, if authorised to be served by post . . . . .	0	1	6

In addition to the above fees, the following allowances are to be made :—

As to writ, if exceeding two folios, for copy for service beyond such two, per folio . . . . .	0	0	4
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As to summons to attend at the Judge's chambers, for each copy to serve . . . . .	0	1	0
or per folio . . . . .	0	0	4

For preparing notice to produce for inspection, or on the hearing of a cause, or notice to admit . . . . .	0	5	0
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If special or necessarily long, such allowance as the taxing officer shall think proper, not exceeding per folio . . . . .	0	0	8
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And for each copy, not exceeding per folio . . . . .	0	0	4
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For preparing notice of motion . . . . .	0	3	0
or per folio . . . . .	0	1	0

Copy for service . . . . .	0	1	0
or per folio . . . . .	0	0	4

For preparing any necessary or proper notice, not otherwise provided for . . . . .	0	1	6
or if special, and necessarily exceeding three folios, for preparing same for each folio beyond three . . . . .	0	1	0

*Services, Notices, and Demands—contd.*

	£	s.	d.
And for each copy for service, per folio beyond such three . . . . .	0	0	4
Copies for service of petitions, and of orders with necessary notices (if any) to accompany, per folio . . . . .	0	0	4

Except as otherwise provided, the allowances for services include copies for service.

Where notice of filing affidavits is required, only one notice is to be allowed for a set of affidavits filed, or which ought to be filed together.

*Appearances.*

Entering any appearance . . . . .	0	6	8
If entered at one time, for more than one person, for every party beyond the first . . . . .	0	1	0

*Instructions.*

To institute proceedings for condemnation or other proceedings . . . . .	0	6	8
To appear and claim or defend . . . . .	0	6	8
For petition or claim under O. III or on a reference . . . . .	0	13	4
For answer . . . . .	0	6	8
For reply . . . . .	0	6	8
To amend any pleading . . . . .	0	6	8
For any special case or affidavit, except an affidavit of service for which no fee for instructions shall be allowed . . . . .	0	6	8
For bail bond . . . . .	0	6	8
To appeal against order of Judge or Registrar, and to appear thereon . . . . .	0	13	4
To add parties by order of Judge or Registrar . . . . .	0	6	8
For counsel to advise on evidence when the evidence in chief is to be taken orally . . . . .	0	6	8
or not to exceed . . . . .	1	1	0
For counsel to make any application to the Judge or Registrar where no other brief . . . . .	0	6	8
or such further allowance as the taxing officer shall consider reasonable having regard to the nature of the application.			

For brief on hearing of a cause, or a reference, or objection to Registrar's report, such fee may be allowed as the taxing officer shall think fit, having regard to all the circumstances of the case, and to other allowances, if any, for attendances on witnesses, procuring evidence, and perusal of documents.

An allowance for instructions for brief may be made if the cause or application has not come on for hearing, if, in the opinion of the taxing officer, it was reasonable that preparation should be made for the hearing of the cause or application.

*Drawing Pleadings and other documents.*

Petition claim, or claim on reference . . . . .	0	10	0
or per folio . . . . .	0	1	0
Answer . . . . .	0	5	0
or per folio . . . . .	0	1	0
Reply, and any other pleading, and amendments of any pleading . . . . .	0	5	0
or per folio . . . . .	0	1	0

*Drawing Pleadings and other documents—contd.*

	£	s.	d.
Notice of motion . . . . .	0	10	0
Particulars, breaches, and objections, when required, and one copy to deliver . . . . .	0	5	0
or such amount as the taxing officer may think fit, not exceeding per folio . . . . .	0	0	8
If more than one copy to be delivered, for each other copy per folio . . . . .	0	0	4
Special case, admissions, and affidavits, per folio . . . . .	0	1	0
or such further allowance for work, labour, and expenses in and about the preparation of such documents as the taxing officer in his discretion may think proper.			
Bail bond, including copy . . . . .	0	6	8
Brief, on trial or hearing of cause, issue of fact, references, assessment of damages, examination of witnesses, special case or petition before a Judge, Registrar, examiner or officer of the Court, when necessary and proper, including necessary and proper observations, per folio . . . . .	0	1	0
Brief on motion or summons . . . . .	0	6	8
or per folio . . . . .	0	1	0
Accounts, statements, and other documents for the Judge's chambers, when required, not exceeding per folio . . . . .	0	0	8
Advertisements, including attendance therefor . . . . .	0	6	8
Bill of costs for taxation, including copy for the taxing officer, per folio . . . . .	0	0	8

*Copies.*

Of pleadings, briefs, and other documents where no other provision is made, at per folio . . . . .	0	0	4
Where, pursuant to Rules or Order of Court, any pleading, special case, or petition of right, or evidence is printed, the solicitor of the party printing shall be allowed for a copy for the printer (except when made by the officer of the Court), at per folio . . . . .	0	0	4
And for examining the proof print, at per folio . . . . .	0	0	2
And for printing the amount actually and properly paid to the printer, the amount allowed for in Admiralty actions.			
And in addition for every 20 beyond the first 20 copies, at per folio . . . . .	0	0	1½

And where any part shall properly be printed in a foreign language, or as a facsimile, or in any unusual or special manner, or where any alteration in the document being printed becomes necessary after the first proof, such further allowance shall be made as the taxing officer shall think reasonable.

The solicitor for party entitled to take printed copies shall be allowed, for such number of copies as he shall necessarily or properly take, the amount he shall pay therefor.

In addition to the allowances for printing and taking printed copies, there shall be allowed for such printed copies as may be necessary or proper for the following but for no other purposes (*videlicet*),

Of any pleading for delivery to the opposite party or filing in default of appearance.

*Copies—contd.*

£ s. d.

Of any petition of right for presentation, if presented in print, and for the solicitor of the Treasury, and service on any party.

Of any pleading, special case, or petition of right, for the use of the Judge or Registrar.

Of any affidavit to be sworn to in print.

And of any pleading, special case, petition of right, or evidence for the use of counsel in Court, and in country agency causes when proper to be sent as a close copy for the use of the country solicitor at per folio . . . . .

0 0 2

Such additional allowances for printed copies for the Judge or Registrar, and for counsel, are not to be made where written copies have been made previously to printing, and are not in any case to be made more than once in the progress of the cause.

Close copies, whether printed, typed, or written, are not to be allowed as of course, but the allowance is to depend on the propriety of making or sending the copies, which in each case is to be shown and considered by the taxing officer.

Inserting amendments in a printed copy of any pleading, special case, or petition of right, when not reprinted . . . . .  
or per folio . . . . .

0 1 0  
0 0 4

*Perusals.*

Of petitions, answer, reply, claim on reference, and other pleading by the solicitor of the party other than the party filing or delivering the same . . . . .

0 6 8

or per folio . . . . .

0 0 4

Of amendment of any such pleading in writing . . . . .

0 6 8

or per folio . . . . .

0 0 4

If same reprinted . . . . .

0 6 8

or per folio of amendment . . . . .

0 0 4

Of interrogatories to be answered by a party by his solicitor . . . . .

0 6 8

or per folio . . . . .

0 0 4

Of notice to produce on hearing of cause or examination of witnesses, and notice to admit by the solicitor of the party served . . . . .

0 6 8

or if to admit facts, per folio . . . . .

0 1 0

Of affidavits by the solicitor of the party against whom the same can be read per folio . . . . .

0 0 4

*Attendances.*

To deliver, or file in lieu of delivery, any pleading and a special case . . . . .

0 3 4

To file any document or instrument, or notice of motion, including the minute . . . . .

0 6 8

To inspect, or produce for inspection, documents pursuant to a notice to admit . . . . .

0 6 8

or per hour . . . . .

0 6 8

To examine and sign admissions . . . . .

0 6 8

To obtain or give any necessary or proper consent . . . . .

0 6 8

To obtain an appointment to examine witnesses . . . . .

0 6 8

*Attendances—contd.*

	£	s.	d.
In the marshal's office, on leaving with him any instrument required to be served by him . . . . .	0	6	8
On examination of witnesses before any examiner, commissioner, officer, or other person . . . . .	0	13	4
<i>or according to circumstances not to exceed . . . . .</i>	2	2	0
On deponents being sworn, or by a solicitor or his clerk to be sworn, to an affidavit in answer to interrogatories or other affidavit . . . . .	0	6	8
When there are several deponents, or it is necessary for the purpose of an affidavit being sworn to go to a distance beyond two miles, or to employ an agent, the taxing officer may make such further allowance as he shall consider reasonable.			
On a summons at Judges' chambers . . . . .	0	6	8
<i>or according to circumstances, not to exceed . . . . .</i>	1	1	0
On counsel with brief or other papers—			
If counsel's fee one guinea . . . . .	0	3	4
If more and under five guineas . . . . .	0	6	8
If five guineas and under 20 guineas . . . . .	0	6	8
If 20 guineas . . . . .	0	13	4
If more, for each 10 guineas or part thereof above 20 guineas . . . . .	0	6	8
On consultation or conference with counsel . . . . .	0	13	4
To enter or set down cause or special case, for hearing or trial . . . . .	0	6	8
In Court on every motion, each day . . . . .	0	6	8
On same when heard, each day . . . . .	0	13	4
<i>or according to circumstances, not to exceed . . . . .</i>	2	2	0
On hearing or trial of any cause, or matter, or issue of fact, or on assessment of damages, when in the paper or when heard or tried, each day . . . . .	0	10	0
<i>or according to circumstances, not to exceed . . . . .</i>	3	3	0
If the solicitor does not carry on business in the town in which the Prize Court sits, the Registrar may in his discretion allow him for each day he is necessarily absent from his place of business any sum not exceeding, per day . . . . .	3	3	0
And expenses (besides actual reasonable travelling expenses) each day, including Sundays, not exceeding . . . . .	1	1	0
If the solicitor has to attend on more than one hearing or assessment at the same time and place the expenses in such case to be rateably divided.			
To hear judgment when same adjourned . . . . .	0	6	8
<i>or according to circumstances, not exceeding . . . . .</i>	0	13	4
Before the Registrar or before the Registrar and merchants, on a reference . . . . . From £1 1s. to . . . . .	5	5	0
To deliver papers (when required) for the use of a Judge prior to a hearing . . . . .	0	6	8
On taxation of a bill of costs . . . . .	0	6	8
<i>or according to circumstances, not to exceed . . . . .</i>	3	3	0
To pay reference fees . . . . .	0	6	8
To arrange for and on completion of bail papers . . . . .	0	13	4

*Attendances—consolid.*

	£	s.	d.
To enquire as to sufficiency of sureties, in respect of each surety . . . . .	0	6	8
<i>or</i> such further amount as the taxing officer may think reasonable, if any special enquiries have been made.			
Inspecting bail papers when filed . . . . .	0	6	8
To obtain or give an undertaking to appear . . . . .	0	6	8
On printer to insert advertisements, or for any other necessary purpose . . . . .	0	6	8
On Registrar to certify that a cause set down is settled, or for any reason not to come into the paper for hearing . . . . .	0	6	8
To advise, or receive instructions from, a client, where rendered necessary by anything done by an opposite party during the progress of a cause or matter, for each attendance . . . . .	0	6	8
<i>or</i> such further allowance as the taxing master shall consider reasonable.			
On any other attendance (whether before the Judge in chambers, before the Registrar, a commissioner, examiner, or the marshal, or upon a witness or a party or his solicitor) which the taxing officer shall deem necessary, and for which a fee has not been specially provided . . . . .	0	6	8

*Oaths and Exhibits.*

Commissioners to take oaths or affidavits. For every oath or declaration . . . . .	0	2	0
The solicitor for preparing each exhibit . . . . .	0	1	0
The commissioner for marking each exhibit . . . . .	0	1	4

*Letters.*

For every letter written by the solicitor which does not fall under the head of instructions for brief, and which the taxing officer shall deem reasonable and necessary . . . . .	0	3	6
<i>or</i> according to circumstances not to exceed . . . . .	0	5	0
For every letter in the nature of a notice sent by a solicitor to his own client or any other person . . . . .	0	1	6
And in addition, in respect of correspondence between a solicitor and his client, other than correspondence allowed for by the taxing officer under the head of instructions for brief, for every letter which the taxing officer shall deem reasonable and necessary . . . . .	0	3	6
<i>or</i> according to circumstances not to exceed . . . . .	0	5	0

In addition to the above an allowance is to be made for the necessary expenses of postages, carriage, and transmission of documents.

*Evidence.*

As to evidence such just and reasonable charges and expenses as appear to have been properly incurred in procuring evidence and attendance of witnesses are to be allowed.

*Counsel.*

Fees to counsel shall be allowed in cases where such fees would be allowed in like proceedings in Admiralty business and to the like amount, provided that, as to refresher fees, the taxing officer shall allow such fees as in his discretion he shall consider reasonable.



*Bail.*

The commission or fee paid to persons becoming sureties to bail bonds or otherwise giving security may be allowed provided that the amount thereof shall not in the aggregate exceed one pound per centum.

*General.*

On every taxation the taxing master shall allow all such costs, charges and expenses as appear to him to have been necessary or proper for the attainment of justice, or for defending the rights of any party, but save as against the party who incurred the same no costs shall be allowed which appear to the taxing master to have been incurred or increased through overcaution, negligence, or mistake, and the fees hereinbefore mentioned are subject to this general rule.

In addition to the fees hereinbefore mentioned, the taxing officer may allow to the solicitor such remuneration as he may consider just and reasonable, in respect of work and labour, which is not specifically provided for by the above scale, and which in the opinion of the taxing officer was reasonably necessary for the conduct of the cause or matter.

[*Gazette of India*, Extraordinary, dated the 20th September, 1939.]

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*E. A. Department, No. 207-N., dated the 10th October, 1939.*—The following Order of His Majesty in Council is published for general information :—

AT THE COURT AT BUCKINGHAM PALACE,

*The 5th day of September, 1939.*

Present :

THE KING'S MOST EXCELLENT MAJESTY IN  
COUNCIL.

Whereas by treaty, capitulation, grant, usage, sufferance and other lawful means, His Majesty the King has jurisdiction within the territories referred to in the Orders mentioned in the Schedule hereto :

And whereas by section 4 of the Emergency Powers (Defence) Act, 1939,<sup>1</sup> it is provided that His Majesty may by Order in Council direct that the provisions of that Act other than that section shall extend, to the extent of His Majesty's jurisdiction therein, to any foreign country in which for the time being His Majesty has jurisdiction, with

<sup>1</sup> 2 & 3 Geo. 6,  
Ch. 62.

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<sup>1</sup> *Supra*, p. 1.

such exceptions, adaptations and modifications, if any, as may be specified in the Order, and that such an Order in Council may direct that any such authority as may be specified in the Order shall be substituted for His Majesty in Council as the authority empowered to make Defence Regulations for the country or territory in respect of which the Order is made :

And whereas by section 14 of the Trading with the Enemy Act, 1939,<sup>1</sup> it is similarly provided that His Majesty may by Order in Council direct that the provisions of that Act, with such exceptions, adaptations and modifications, if any, as may be prescribed by or under the Order, shall extend to any such foreign country as aforesaid :

2 & 3 Geo. 6,  
Ch. 39.

NOW, THEREFORE, His Majesty by virtue and in exercise of the powers in this behalf by the Foreign Jurisdiction Acts, 1890 and 1913, and by the aforesaid Acts or otherwise in His Majesty vested, is pleased, by and with the advice of His Privy Council, to order and it is hereby ordered, as follows :—

1.—(1) This Order may be cited as The Persian Gulf States (Emergency) Order in Council, 1939.

(2) This Order shall take effect immediately.

(3) This Order shall be published in the *Gazette of India*.

2.—(1) Subject to the adaptation and modification set out in the following paragraph of this Article sections 1, 2, 3 and 6 of the Emergency Powers (Defence) Act, 1939,<sup>2</sup> shall apply in each of the territories referred to in the Orders mentioned in the Schedule hereto to the extent of His Majesty's jurisdiction therein but otherwise in the same manner as they apply to the United Kingdom.

2 & 3 Geo. 6,  
Ch. 32.

(2) The Political Resident in the Persian Gulf shall be substituted for His Majesty in Council as the authority empowered to make Defence Regulations for the said territories (hereinafter referred to as the Defence Regulations).

3.—(1) Subject to such exceptions, adaptations and modifications as may be prescribed in accordance with the provisions of the following paragraph of this Article, the provisions of the Trading with the Enemy Act, 1939,<sup>3</sup> shall apply in each of the territories referred to in the Orders

2 & 3 Geo. 6,  
Ch. 39.

<sup>1</sup> *Supra*, p. 23.

<sup>2</sup> *Supra*, p. 1.

mentioned in the Schedule hereto, to the extent of His Majesty's jurisdiction therein but otherwise in the same manner as they apply to the United Kingdom, as from the date on which the first regulations applicable to the territory are issued in accordance with the provisions of the following paragraph of this Article.

(2) The Political Resident in the Persian Gulf shall have the power to prescribe by Regulations (hereinafter referred to as the Trading with the Enemy Regulations) such exceptions, adaptations and modifications as may be expedient and necessary to the provisions of the aforesaid Act in their application to each of the territories aforesaid.

4. <sup>1</sup>[For the purposes of this Order and of all regulations made thereunder, His Majesty's jurisdiction in each of the territories shall be deemed to extend to those persons to whom and matters to which the powers conferred by the Order mentioned in the Schedule applicable to the territory, or any subsequent Order, made in amendment thereof or substitution therefor, apply. And the Most Honourable the Marquess of Zetland and the Right Honourable Viscount Halifax two of His Majesty's Principal Secretaries of State are to give the necessary directions herein as may to them respectively appertain.]

5. Defence Regulations and Trading with the Enemy Regulations may be made applicable to all the territories referred to in the Orders in Council mentioned in the Schedule or to any of them.

6. Defence Regulations and Trading with the Enemy Regulations shall not take effect until they are allowed by a Secretary of State, or, with his previous or subsequent assent, by the Governor General of India in Council; provided that in case of urgency declared in any such regulations the same shall take effect before such allowance, and shall continue to have effect unless and until they are disallowed by the Secretary of State, or with his previous or subsequent assent, by the Governor General of India in Council, and until notification of such disallowance is received and published by the Political Resident and such disallowance shall be without prejudice to anything done or suffered under such regulations in the meantime.

7. All Defence and Trading with the Enemy Regulations shall be published in such manner and in such places as the Political Resident shall think proper.

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<sup>1</sup> This Article was substituted by the Persian Gulf States (Emergency) (Amendment) Order in Council, 1939. See Notification No. 270-N., dated the 23rd December, 1939.

8. Defence and Trading with the Enemy Regulations shall prevail over the provisions of any Order in Council applicable to the territories referred to in the Orders mentioned in the Schedule and of all rules and regulations made thereunder in so far as there may be any inconsistency, but neither the provisions of this Order nor of any Defence Regulations shall be deemed to prejudice any power existing under any Order in Council applicable to the aforesaid territories to make King's Regulations with regard to any matter.

And the Most Honourable the Marquess of Zetland and the Right Honourable Viscount Halifax two of His Majesty's Principal Secretaries of State are to give the necessary directions herein as to them may respectively appertain.

*Rupert B. Howarth.*

SCHEDULE.

S. R. & O., 1915 No. 891, p. 247.	The Bahrain Order in Council, 1915.
S. R. & O., 1935 No. 283, p. 490.	The Kuwait Order in Council, 1935.
S. R. & O., 1915 No. 132 I., p. 280.	The Muscat Order in Council, 1915.
S. R. & O. . . . .	The Qatar Order in Council, 1939.

[ *Gazette of India*, 1939, Pt. I, p. 1687.]

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*Commerce Dept., No. 66-C. W. (3)/40, dated the 15th February, 1940.*—The following Order of His Majesty in Council is published for general information :—

AT THE COURT AT BUCKINGHAM PALACE,

*The 27th day of November, 1939.*

Present :

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

Whereas His Majesty has been compelled to take up arms against Germany in defence of the fundamental right of nations to a free and peaceful existence :

And whereas German forces have in numerous cases sunk merchant vessels, British, Allied and neutral, in violation of the rules contained in the Submarine Protocol 1936, to which Germany is a party :

And whereas merchant vessels, British, Allied and neutral, have been sunk by mines laid by German forces indiscriminately and without notification, in contravention of the obligations of humanity and the provisions of the Hague Convention No. VIII of 1907 to which Germany is a party :

And whereas the sinking of these vessels has been effected without regard to their nationality or destination or to the nature, ownership or destination of their cargoes :

And whereas these acts have already resulted in grave loss of non-combatant life, British, Allied and neutral :

And whereas it is manifest that the German Government have deliberately embarked on a policy of endeavouring to destroy all seaborne trade between the Allied and other countries by a ruthless use of the forces at their disposal, contrary to the laws and customs of war, the rights of neutrals and the obligations of humanity :

And whereas this action on the part of the German Government gives to His Majesty an unquestionable right of retaliation :

And whereas the Allies of His Majesty are associated with Him in the steps now to be announced for restricting further the commerce of Germany :

Now, THEREFORE, His Majesty is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows :—

1. Every merchant vessel which sailed from any enemy port, including any port in territory under enemy occupation or control, after the 4th day of December, 1939, may be required to discharge in a British or Allied port any goods on board laden in such enemy port.
2. Every merchant vessel which sailed from a port other than an enemy port after the 4th day of December, 1939, having on board goods which are of enemy origin or are enemy property may be required to discharge such goods in a British or Allied port.
3. Goods discharged in a British port under either of the preceding Articles shall be placed in the custody of the Marshal of the Prize Court, and,

unless the Court orders them to be requisitioned for the use of His Majesty, shall be detained or sold under the direction of the Court. The proceeds of goods so sold shall be paid into Court.

On the conclusion of peace such proceeds and any goods detained but not sold shall be dealt with in such manner as the Court may in the circumstances deem just: provided that nothing herein shall prevent the payment out of Court of any such proceeds or the release of any goods at any time (a) if it be shown to the satisfaction of the Court that the goods had become neutral property before the date of this Order, or (b) with the consent of the proper officer of the Crown.

4. The law and practice in Prize shall, so far as applicable, be followed in all cases arising under this Order.
5. Nothing in this Order shall affect the liability of any vessel or goods to seizure or condemnation independently of this Order.
6. For the purposes of this Order the words "goods which are of enemy origin" shall include goods having their origin in any territory under enemy occupation or control, and the words "goods which.....are enemy property" shall include goods belonging to any person in any such territory.
7. Proceedings under this Order may be taken in any Prize Court having jurisdiction to which the <sup>1</sup>Prize Court Rules, 1939, apply.
8. For the purposes of this Order the words "British Port" mean any port within the jurisdiction of any Prize Court to which the <sup>1</sup>Prize Court Rules, 1939, apply.

*Rupert B. Howarth.*

[*Gazette of India*, Extraordinary, dated the 15th February, 1940.]

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<sup>1</sup> *Suzra*, p. 259.

*Commerce Dept., No. 17 (26)-E.T./40, dated the 31st August, 1940.*—\* \* \* \* \*

the following Order of His Majesty in Council is published for general information :—

AT THE COURT AT BUCKINGHAM PALACE,

*The 11th day of June, 1940.*

Present :

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

Whereas, by reason of a declaration of war against His Majesty by Italy, His Majesty has been compelled to proclaim the existence of a state of war with Italy :

And whereas by an <sup>1</sup>Order in Council, dated the 27th day of November, 1939, His Majesty was pleased to direct certain measures to be taken against the commerce of Germany as an act of retaliation against the violations of the laws and customs of war, the rights of neutrals and the obligations of humanity committed by the German Government and recited in the said Order :

And whereas these violations have continued and are evidently part of the settled method of waging war which Germany has adopted :

And whereas Italy by her actions has associated herself with Germany in the present war and has thereby made herself a party to the method of waging war adopted by Germany and will share in any advantage derived therefrom :

And whereas the commerce of Italy will, equally with that of Germany, be employed to further the common cause of the enemies of His Majesty :

And whereas these facts give to His Majesty an unquestionable right to apply to the commerce of Italy measures similar to those taken against that of Germany :

Now, THEREFORE, His Majesty is pleased, by and with the advice of His Privy Council to order, and it is hereby ordered, as follows :—

Subject to the substitution of the 4th day of June, 1940, for the 4th day of December, 1939, in Articles 1 and 2 thereof, the <sup>1</sup>Order in Council, dated the 27th day of November, 1939, shall apply for restricting the commerce of Italy in the same manner as it applies for restricting the commerce of Germany.

*Rupert B. Howorth.*

[ *Gazette of India*, 1940, Pt. I, p. 1259.]

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<sup>1</sup> *Supra*, p. 393.

*Commerce Dept., No. 17 (51)-E.T. 40, dated the 14th September, 1940.*—The following Order of His Majesty in Council is published for general information :—

AT THE COURT AT BUCKINGHAM PALACE,

*The 17th day of July, 1940.*

Present :

THE KING'S MOST EXCELLENT MAJESTY IN  
COUNCIL.

Whereas it is provided by the <sup>1</sup>Prize Act, 1939 (2 & 3 Geo. 6, c. 65), that the law relating to Prize shall apply in relation to aircraft and goods carried therein in the same manner as it applies to ships and goods carried therein :

And whereas by Orders in Council, dated the <sup>2</sup>27th day of November, 1939, and the <sup>3</sup>11th day of June, 1940, His Majesty was pleased, for the reasons specified in the said Orders, to direct certain measures to be taken against the commerce of Germany and Italy respectively :

And whereas it is provided by the said Orders that the law and practice in Prize shall, so far as applicable, be followed in all cases arising thereunder :

And whereas it is expedient to make clear the position of aircraft and goods carried therein in relation to the said Orders :

Now, THEREFORE, His Majesty is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows :—

The Orders in Council, dated the <sup>2</sup>27th day of November, 1939, and the <sup>3</sup>11th day of June 1940, shall be deemed to have applied and shall apply as if the terms "merchant vessel" and "vessel", wherever occurring therein included civil aircraft; as if the term "port" included place; and as if the term "sailed from" included the departure of an aircraft.

*E. C. E. Leadbitter.*

[ *Gazette of India*, 1940, Pt. I, p. 1352.]

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<sup>1</sup> *Supra*, p. 9.

<sup>2</sup> *Supra*, p. 393

<sup>3</sup> *Supra*, p. 396.



*Commerce Department No. 106 (7)-E.T. (A)/41-(2.), dated the 21st February, 1942.*—The following Orders of His Majesty in Council are published for general information :—

# I.

## AT THE COURT AT BUCKINGHAM PALACE,

*The 31st day of July, 1940.*

### PRESENT :

## THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS by <sup>1</sup>Orders in Council dated the 27th day of November, 1939, and the 11th day of June, 1940, His Majesty was pleased to direct certain measures to be taken against the commerce of the enemy :

AND WHEREAS the illegal acts on the part of the German Government referred to in the said Orders have continued in an aggravated form and have, in equal violation of the laws of war, the rights of neutrals and the obligations of humanity, been accompanied by air attacks on merchant and other non-combatant shipping, resulting in grave loss of civilian life :

AND WHEREAS neutral countries have been subjected to unprovoked attack and to invasion and occupation by Germany, in gross violation of their neutrality and for the sole purpose of prosecuting the War against His Majesty and His Majesty's Allies :

AND WHEREAS Italy, by entering the war as Germany's ally, has associated herself with Germany's actions, sharing in any advantages derived therefrom and employing her commerce in the common cause of the enemies of His Majesty :

AND WHEREAS these proceedings on the part of the enemy give to His Majesty an unquestionable right to adopt such measures as may be deemed expedient for restricting further the enemy's commerce and for maintaining the efficiency of those previously taken :

AND WHEREAS, for the convenience of traders and for the avoidance of the risks and delays inseparable from the diversion of ships into port in the exercise of belligerent rights against commerce at sea, a system has been instituted

<sup>1</sup> *Supra*, pp. 393 and 396.

whereby passes can be obtained for approved cargoes and for ships which carry none but approved cargoes :

NOW, THEREFORE, His Majesty is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows :—

1. For the purposes of this Order :—

- (i) the term “ enemy territory ” includes territory under enemy occupation or control, and the term “ enemy port ” includes a port in the occupation of the enemy or situated in territory under enemy occupation or control ;
- (ii) the term “ goods of enemy origin ” includes goods having their origin in territory under enemy occupation or control, and the term “ goods of enemy . . . ownership ” includes goods belonging to a person in such territory ;
- (iii) the term “ Cargo Navicert ” means a pass issuable by the appropriate British or Allied authority in the neutral country of shipment in respect of goods consigned to any port or place from which they might reach the enemy, to the effect that, so far as is known at the date of issue, there is no objection to the consignment ;
- (iv) the term “ Certificate of Origin and Interest ” means a pass issuable by the appropriate British or Allied authority in neutral territory (and, where necessary, endorsed at the port of shipment), certifying that a declaration of the non-enemy origin and ownership of the goods concerned has been made, supported by satisfactory documentary evidence ;
- (v) the term “ Ship Navicert ” means a pass issuable to a vessel in respect of a given voyage by the appropriate British or Allied authority at all principal British, Allied or neutral ports, if that authority is satisfied that the vessel is duly qualified to receive it.

2. Any vessel on her way to or from a port through which goods might reach or come from enemy territory or the enemy armed forces, not being provided with a Ship Navicert valid for the voyage on which she is engaged shall, until the contrary is established, be deemed to be carrying contraband or goods of enemy origin or ownership, and shall be liable to seizure as Prize ; provided that a vessel, other

than a vessel which sailed from or has called at an enemy port, shall not be liable to seizure under the provisions of this Article unless she sailed from or could have called at a port at which she would, if duly qualified, have obtained a Ship Navicert.

3.—(1) Goods consigned to any port or place from which they might reach enemy territory or the enemy armed forces and not covered by a valid Cargo Navicert or, in the case of goods shipped from a British or Allied port, by a valid Export or Transshipment Licence, where such Licence is required, shall, until the contrary is established, be deemed to have an enemy destination.

(2) Goods shipped from any port from which goods of enemy origin or ownership might have been shipped, and not covered by a valid Certificate of Origin and Interest, shall, until the contrary is established, be deemed to be of enemy origin or ownership.

4. Goods of enemy origin or ownership shall be liable to condemnation.

5. Any vessel seized under Article 2 hereof and carrying contraband or goods of enemy origin or ownership shall be liable to condemnation in respect of such carriage.

6.—(1) A Ship or Cargo Navicert, Export or Transshipment Licence ceases to be valid if any condition or direction to which it is subject is not observed.

(2) A Ship Navicert ceases to be valid if, after obtaining it, the vessel calls at an enemy port or (unless otherwise indicated in the Navicert) at any port other than a declared port of destination.

7. The provisions of this Order shall not apply to any vessel which left her last port of departure before the 1st day of August, 1940, on her way to or from a port through which goods might reach or come from enemy territory or the enemy armed forces, or to any goods carried in such a vessel.

8. Nothing in this Order shall be deemed to confer any immunity from detention, seizure or condemnation on any vessel or goods by reason of being provided with or covered by any form of pass or permit.

9. Nothing in this Order shall affect the liability of any vessel or goods to detention, seizure or condemnation independently of this Order.

10. The law and practice in Prize shall, so far as applicable, be followed in all cases arising under this Order.

11. Proceedings under this Order may be taken in any Prize Court having jurisdiction to which the <sup>1</sup>Prize Court Rules, 1939, apply.

E. C. E. LEADBITTER.

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II.

AT THE COURT AT BUCKINGHAM PALACE,

*The 12th day of December, 1941.*

PRESENT :

THE KING'S MOST EXCELLENT MAJESTY IN  
COUNCIL.

WHEREAS, by reason of her unprovoked aggression, His Majesty has been compelled to proclaim the existence of a state of war with Japan :

AND WHEREAS Japan has carried out attacks against British, United States and other territory without previous warning, either in the form of declaration of war or of an ultimatum with a conditional declaration of war in flagrant violation of inter-national law and particularly of Article I of the Third Hague Convention relative to the opening of hostilities, to which both Japan and the United Kingdom are parties :

AND WHEREAS, after the outbreak of the present war, Japan signed a Treaty of Co-operation and Mutual Assistance with Germany and Italy, dated the 27th day of September, 1940, and has from time to time by her actions and declarations manifested the clear intention of affording Germany and Italy support and assistance in the prosecution of their hostilities against His Majesty :

AND WHEREAS, on the 11th day of December, 1941, the said Treaty was supplemented by a Treaty of Military Alliance between the three powers, and Japan is accordingly now allied with Germany and Italy in the present war :

AND WHEREAS these facts give to His Majesty an unquestionable right of retaliation by applying to the commerce of Japan measures similar to those taken against that of Germany and Italy :

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<sup>1</sup>*Supra*, p. 259.

AND WHEREAS by <sup>1</sup>Orders in Council dated the 27th day of November, 1939, the 11th day of June, 1940, and the 17th and 31st days of July, 1940, His Majesty was pleased to direct certain measures to be taken against German and Italian commerce as an act of retaliation against the illegal acts referred to in the said Orders :

NOW, THEREFORE, His Majesty is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered as follows :—

Subject to the substitution of the 7th day of December, 1941, for the 4th day of December, 1939, in articles 1 and 2 of the Order in Council dated the 27th day of November, 1939, the said Order and the Orders in Council dated the 17th and 31st days of July, 1940, shall apply for restricting the commerce of Japan in the same manner as they apply for restricting that of Germany and Italy.

RUPERT B. HOWORTH.

[*Gazette of India*, 1942, Pt. I, p. 376.]

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*Commerce Department No. 106 (7)-E. T. (A)/41/(1), dated the 7th March, 1942.*—The following Order of His Majesty in Council is published for general information :—

AT THE COURT AT BUCKINGHAM PALACE,

*The 22nd day of January, 1942.*

PRESENT :

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS a state of war exists between His Majesty and Finland, Hungary, Roumania and Bulgaria, who are conducting the war against His Majesty as allies of Germany and Italy.

AND WHEREAS Finland, Hungary, Roumania and Bulgaria, by associating themselves with Germany and Italy in the present war, have made themselves party to the method of waging war adopted by Germany and Italy, and share in any advantages derived therefrom :

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<sup>1</sup> *Supra*, pp. 393, 396, 397 and 398.

AND WHEREAS the commerce of Finland, Hungary, Roumania and Bulgaria is, equally with that of Germany and Italy, employed to further the common cause of the enemies of His Majesty :

AND WHEREAS these facts give to His Majesty an unquestionable right to apply to the commerce of Finland, Hungary, Roumania and Bulgaria measures similar to those taken against that of Germany and Italy :

AND WHEREAS by Orders in Council dated the 27th day of November, 1939, the 11th day of June, 1940, and the 17th and 31st days of July, 1940, His Majesty was pleased to direct certain measures to be taken against German and Italian commerce as an act of retaliation against the illegal acts referred to in the said Orders :

NOW, THEREFORE, His Majesty is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows :—

Subject to the substitution, in the case of Finland, Hungary and Roumania, of the 6th day of December, 1941, and, in the case of Bulgaria of the 13th day of December, 1941, for the 4th day of December, 1939, in articles 1 and 2 of the Order in Council dated the 27th day of November, 1939, the said Order and the Orders in Council dated the 17th and 31st days of July, 1940, shall apply for restricting the commerce of Finland, Hungary, Roumania and Bulgaria in the same manner as they apply for restricting that of Germany and Italy.

RUPERT B. HOWORTH.

[*Gazette of India*, 1942, Pt. I, p. 491.]

*Commerce Department No. 106 (7)-E. T. (A) 41-1, dated the 2nd May, 1942.*—The following Order of His Majesty in Council is published for general information :—

AT THE COURT AT BUCKINGHAM PALACE,

*The 5th day of March, 1942.*

PRESENT :

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS, by reason of a declaration of war on the part of Thailand against His Majesty, a state of war exists between His Majesty and Thailand :

AND WHEREAS, by reason of the said declaration of war, Thailand is allied with Japan in the present war associated with Germany and Italy with whom Japan has signed a Treaty of Military Alliance :

AND WHEREAS the commerce of Thailand is, equally with that of Germany, Italy and Japan, employed to further the common cause of the enemies of His Majesty :

AND WHEREAS these facts give to His Majesty an unquestionable right to apply to the commerce of Thailand measures similar to those taken against that of Germany, Italy and Japan :

AND WHEREAS, by <sup>1</sup>Orders in Council dated the 27th day of November, 1939, the 11th day of June, 1940, the 17th and 31st days of July, 1940, and the 12th day of December, 1941, His Majesty was pleased to direct certain measures to be taken against German, Italian and Japanese commerce, as an act of retaliation against the illegal acts referred to in the said Orders :

NOW, THEREFORE, His Majesty is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows :—

Subject to the substitution of the 25th day of January, 1942, for the 4th day of December, 1939, in articles 1 and 2 of the Order in Council dated the 27th day of November, 1939, the said Order and the Orders in Council dated the 17th and 31st days of July, 1940, shall apply for restricting the commerce of Thailand in the same manner as they apply for restricting that of Germany, Italy and Japan.

RUPERT B. HOWORTH.

[*Gazette of India*, 1942, Pt. I, p. 790.]

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*Commerce Department No. 275-M. II (21)/39-War (i), dated the 31st January, 1942.*—The following Scheme made by the Minister of Pensions in the United Kingdom is published for general information :—

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<sup>1</sup> *Supra*, pp. 393, 396, 397, 398 and 401.

STATUTORY RULES AND ORDERS

1941, No. 1329.

PENSION.

WAR PENSIONS AND DETENTION ALLOWANCES  
(INDIAN SEAMEN, ETC.) SCHEME.

THE WAR PENSIONS AND DETENTION ALLOWANCES (INDIAN SEAMEN, ETC.) SCHEME, 1941, DATED OCTOBER 14, 1941, MADE BY THE MINISTER OF PENSIONS UNDER SECTIONS 3(3), 5(2) AND 7 OF THE PENSIONS (NAVY, ARMY, AIR FORCE AND MERCANTILE MARINE) ACT, 1939 (2 & 3 GEO. 6, C. 83).

1. *Persons to whom the Scheme applies.*—(1) This Scheme applies to—

(a) any person (not being a member of His Majesty's naval forces or a person mentioned in paragraph (2) of this Article) who is employed or engaged in seagoing service as the master or a member of the crew of a British ship on terms and conditions which are customary, or are similar to those customary, in the case of an Indian recruited in India for seagoing service as the master or a member of the crew of such a ship; and

(b) any person who is subject to the Naval Discipline Act by virtue of section 90 of that Act and is employed or engaged in seagoing service in a ship forming part of His Majesty's Navy in pursuance of such an engagement as is mentioned in the said section, being an engagement the terms and conditions of which are customary, or are similar to those customary, in the case of an Indian recruited in India for seagoing service in such a ship in pursuance of such an engagement.

(2) This Scheme does not apply to any person who is employed or engaged as a member of the crew of a British



ship (otherwise than as a wireless operator, apprentice or cadet) for no remuneration or nominal remuneration only.

2. *Interpretation.*—(1) The Interpretation Act, 1889 (52 & 53 Vict., c. 63), applies to the interpretation of this Scheme as it applies to the interpretation of an Act of Parliament.

(2) In this Scheme the following expressions shall, except where the context otherwise requires, have the meanings hereby assigned to them respectively, that is to say,—

(a) “the Act” means the Pensions (Navy, Army, Air Force and Mercantile Marine) Act, 1939;

(b) “British ship” has the same meaning as in the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60), except that it includes a ship within the meaning of that Act not forming part of His Majesty’s Navy which belongs to His Majesty or is held by any person on behalf of or for the benefit of the Crown;

Provided that—

(i) a ship registered in any Dominion within the meaning of the Statute of Westminster, 1931 (other than Newfoundland), or in Burma, shall be deemed not to be a British ship for the purposes of this Scheme unless it is a ship for the time being placed at the disposal of, or chartered by or on behalf of, His Majesty’s Government in the United Kingdom or in any part of His Majesty’s dominions other than any such Dominion as aforesaid or Burma; and

(ii) a ship which is being used for the purposes of private amusement or pleasure shall be deemed not to be a British ship for the purposes of this Scheme;

(c) “dependant,” in relation to a seaman, means any of the following relatives of the seaman, that is to say, a parent, a brother who has not attained the age of fourteen years, an unmarried or widowed sister, a grandchild who has not attained

the age of fourteen years and who is a child of a deceased son or, where no parent of the child is alive, a child of a deceased daughter, a paternal grandparent where no parent of the seaman is alive, and such other relative of the seaman as the Minister may in any special case or class of case direct, being in each case a relative who was in receipt of genuine, regular and substantial support or benefit from the seaman during the relevant period ;

(d) “detention”, in relation to a seaman, means detention which—

(i) is consequent on the capture, seizure, arrest or other restraint of the seaman or of his ship effected by reason of the existence of a state of war ; and

(ii) in the case of a mariner, is for the purpose of section 3 of the Act to be deemed to be caused by reason of his service in a British ship, and, in the case of a naval auxiliary member, is caused by reason of his service in a ship forming part of His Majesty's Navy ;

(e) “eligible child”, in relation to a seaman, means a child of the seaman who has not attained the age of fourteen years and who was born at any time not later than nine months after the relevant date and who is—

(i) a legitimate son or an unmarried legitimate daughter ; or

(ii) an illegitimate son, an unmarried illegitimate daughter, or a daughter whether legitimate or illegitimate who is married or widowed, being a son or daughter who, if born before the relevant date, was at that date being wholly or substantially maintained by the seaman ;

- (f) "mariner" means such a person as is mentioned in sub-paragraph (a) of paragraph (1) of Article 1 of this Scheme ;
- (g) "the Minister" means the Minister of Pensions ;
- (h) "naval auxiliary member" means such a person as is mentioned in sub-paragraph (b) of paragraph (1) of Article 1 of this Scheme ;
- (i) "pre-war rate of pay", in relation to the capacity in which a seaman is employed or engaged at the relevant date, means the rate of pay on the 31st day of August, 1939, of a seaman employed or engaged in that capacity in service of a type and for a period which is the same as, or similar to, the type and period of the service in which the seaman is employed or engaged at the relevant date ;
- (j) "relevant date" means, in relation to a seaman whose death or disablement is directly attributable to a war injury or to detention, the date on which that war injury was sustained or on which that detention commenced, as the case may be, and, in relation to a seaman who suffers detention, the date on which that detention commenced ;
- (k) "relevant period" means—
  - (i) in relation to a seaman whose death is directly attributable to a war injury or to detention, the period commencing twenty-six weeks before the date on which he sustained that war injury or on which that detention commenced, as the case may be, and ending on the date of his death (but excluding any period during which the seaman suffered detention), or such lesser period as the Minister may direct in any special case or class of case ; and
  - (ii) in relation to a seaman who suffers detention, the period of twenty-six weeks (or such lesser

period as the Minister may direct in any special case or class of case) ending on the date on which that detention commenced;

(l) "seaman" means a mariner or naval auxiliary member;

(m) "war injury", in relation to a seaman, means a physical injury—

(i) caused by—

(a) the discharge of any missile (including liquids and gas); or

(b) the use of any weapon, explosive or other noxious thing; or

(c) the doing of any other injurious act;

either by the enemy or in combating the enemy or in repelling an imagined attack by the enemy; or

(ii) caused by the impact on any person or property of any enemy aircraft, or any aircraft belonging to, or held by any person on behalf of or for the benefit of, His Majesty or any allied power, or any part of, or anything dropped from, any such aircraft;

being in any case a physical injury which, in the case of a mariner, is for the purpose of section 3 of the Act to be deemed to be sustained by the mariner by reason of his service in a British ship, and, in the case of a naval auxiliary member, is sustained by that member by reason of his service in a ship forming part of His Majesty's Navy;

(n) "wife", in relation to a seaman, means a wife married to the seaman at the relevant date, and "widow" shall be construed accordingly.

(3) Where a seaman suffers detention, that detention may for the purpose of this Scheme be treated as continuing until whichever is the earlier of the two following dates, that is to say—

(a) the date of his death;

(b) the date on which it is first practicable for him to arrive back in the country to which he belongs;

or until such other date as the Minister may direct in relation to that seaman or to any class of such seamen.

(4) For the purposes of this Scheme and of the (a) War Pensions and Detention Allowances (Mercantile Marine, etc.) Scheme, 1941, terms and conditions on which a person is employed or engaged to perform any duties shall be deemed not to be customary, or similar to those customary in the case of an Indian recruited in India if that person's remuneration is, in the opinion of the Minister, substantially as favourable as the remuneration which is customary in the case of a person ordinarily resident in the United Kingdom who undertakes in the United Kingdom to perform those duties.

**3. Classification of seamen.**—For the purposes of this Scheme a seaman shall belong to the class which is specified in the second column of the First Schedule to this Scheme in relation to the pre-war rate of pay appropriate to the capacity in which at the relevant date the seaman was employed or engaged.

**4. Ascertainment of degree of disablement.**—(1) Where a seaman suffers disablement which is directly attributable to a war injury or to detention, the degree of that disablement shall be assessed and certified in accordance with the following provisions of this Article by a medical officer or board of medical officers appointed or recognised by the Minister for the purpose.

(2) In the case of an injury which is specified in the first column of the First Schedule to the Indian Workmen's Compensation Act, 1923, the degree of disablement shall be assessed and certified at the percentage which is specified in the second column of that Schedule in relation to that injury, and, in the case of two or more such injuries, the degree of disablement shall be assessed and certified at the sum of the percentages so specified in relation to those injuries or at one hundred per cent., whichever is the less.

(3) Subject to the provisions of paragraph (2) of this Article, the degree of disablement shall be assessed by making a comparison between the condition of disablement of the seaman and the condition of a normal healthy male of the same age, without taking into account his earning capacity in his own or any other specific trade or occupation and so that the extent to which that condition has been aggravated by individual factors or extraneous circumstances shall not be included in the degree at which that disablement is assessed ;

Provided that, in a case of disablement directly attributable to two or more war injuries or to two or more detentions, or to both a war injury and a detention, the degree of disablement shall be assessed in accordance with this paragraph by reference to the combined effect of each such war injury or detention.

(4) The degree of disablement assessed under paragraph (3) of this Article shall be certified by way of a percentage, total disablement being presented by one hundred per cent. and a lesser degree of disablement being represented by seventy-five per cent., fifty per cent., twenty-five per cent. or less than twenty-five per cent., as may be most appropriate to the degree of disablement.

**5. Awards of gratuities for disablement.**—(1) Where a seaman suffers disablement which is directly attributable to a war injury or to detention, there may be awarded to him under this Article in respect of that disablement a gratuity of an amount which bears to the sum specified in the second column of the Second Schedule to this Scheme in relation to the class to which he belongs for the purposes of this Scheme the same proportion as the degree at which that disablement has been assessed and certified under Article 4 of this Scheme bears to one hundred per cent. :

Provided that an award under this Article shall only be made in respect of disablement which—

(a) is assessed and certified under paragraph (2) of Article 4 of this Scheme ; or

(b) is of a permanent or prolonged character and is certified under paragraph (4) of Article 4 of this Scheme to be of a degree which is not less than twenty-five per cent.

(2) Where any sum has been paid in respect of the disablement of a seaman by way of a special allowance under Article 6 of this Scheme or by way of a wife's allowance under Article 7 of this Scheme, no reduction on account of that sum shall be made in the amount of a gratuity under this Article in respect of that disablement.

**6. Awards of special allowances in certain cases.**—

(1) Where a seaman suffers disablement which is directly attributable to a war injury or to detention and it has not been determined whether an award in respect of that disablement is to be made under Article 5 of this Scheme or what the amount of that award should be, there may be awarded to him under this Article in respect of that disablement a special allowance in accordance with the following provisions of this Article.

(2) A special allowance may only be awarded if the seaman—

(a) is unable by reason of the disablement to provide by his earnings for his own support and that of his family ; and

(b) is in need of treatment for the disablement.

(3) A special allowance shall be at the weekly rate of three shillings if the seaman is in the United Kingdom and two rupees in any other case.

(4) A special allowance shall not, unless the Minister in the circumstances of any particular case otherwise determines, be paid after the expiration of the period of twelve months from the date of the war injury or of the end of the detention to which the disablement of the seaman is directly attributable.

*7. Awards of wives' allowances in certain cases.—*

(1) Where the conditions laid down in paragraphs (1) and (2) of Article 6 of this Scheme are fulfilled in the case of a seaman who has a wife, there may be awarded under this Article in respect of the disablement of the seaman a wife's allowance in accordance with the following provisions of this Article.

(2) A wife's allowance shall be at such rate as the Minister may from time to time determine having regard to all the circumstances of the case, being a rate which does not exceed the rate specified in the second column of the Third Schedule to this Scheme in relation to the class to which the seaman belongs for the purposes of this Scheme.

(3) A wife's allowance may be paid to the wife of the seaman or may, where there is more than one wife of the seaman, be paid to such one of them, or divided between them in such shares as the Minister may think fit, or may, in any case where the Minister so directs, be paid to the seaman.

(4) A wife's allowance shall not, unless the Minister in the circumstances of any particular case otherwise determines, be paid after the expiration of the period of twelve months from the date of the war injury or of the end of the detention to which the disablement of the seaman is directly attributable.

*8. Awards of widows' pensions.—*(1) Where the death of a seaman is directly attributable to a war injury or to detention, and there is a widow of the seaman, there may be awarded under this Article in respect of the death of

the seaman a widow's pension in accordance with the following provisions of this Article.

(2) A widow's pension shall be at the rate specified in the second column of the Fourth Schedule to this Scheme in relation to the class to which the seaman belongs for the purposes of this Scheme.

(3) A widow's pension may be paid to the widow of the seaman or, where there is more than one widow of the seaman, may be paid to such one of them or divided between them in such shares as the Minister may think fit.

(4) A widow's pension or a share of a widow's pension shall cease to be payable on the date on which the widow to whom that pension or share is being paid dies or remarries or begins to live with any person as his wife.

(5) Where a share of a widow's pension ceases for any reason to be payable to a widow of a seaman, the share of that pension payable to any other widow of the seaman shall not be increased on that account.

**9. Awards of children's allowances.**—(1) Where the death of a seaman is directly attributable to a war injury or to detention, and there is an eligible child of the seaman, there may be awarded under this Article in respect of the death of the seaman a child's allowance for that child in accordance with the following provisions of this Article.

(2) A child's allowance shall, in a case where the child's mother is dead and the child is neither living with nor under the control of a widow of the seaman, be at the monthly rate of four rupees and shall in any other case be at the monthly rate of two rupees.

(3) A child's allowance may be paid to the widow of the seaman if the child is living with her or under her control and may, in any case where the Minister so directs, be applied for the benefit of the child in accordance with the provisions of this Scheme.

**10. Awards of dependants' pensions.**—(1) Where the death of a seaman is directly attributable to a war injury or to detention, and there is a dependant of the seaman who is in pecuniary need arising from age or from some infirmity or other adverse condition which is not of a temporary character (hereinafter referred to as an "eligible dependant"), there may be awarded under this Article in respect of the death of the seaman a dependant's pension in accordance with the following provisions of this Article.

(2) A dependant's pension shall be at such rate as the Minister may from time to time determine having regard



to the number of eligible dependants, their relationship to the seaman the extent of their need and the other circumstances of the case :

Provided that the rate of a dependant's pension shall not exceed whichever of the following rates is applicable, that is to say—

- (a) in a case where the only eligible dependant has not attained the age of fourteen years, the monthly rate of four rupees ;
- (b) in a case where the only eligible dependant has attained the age of fourteen years, the monthly rate of eight rupees ;
- (c) in any other case, the rate of which a widow's pension could be awarded under this Scheme in respect of the death of the seaman :

Provided also that, in any case where a child's allowance is being paid under this Scheme in respect of the death of the seaman at the rate appropriate in a case where the child's mother is dead and the child is neither living with nor under the control of a widow of the seaman, the rate of a dependant's pension shall not exceed the rate which is arrived at by deducting the rate of that child's allowance or, where there is more than one such child's allowance, the aggregate rate of those children's allowances, from the aggregate rate which would have been awarded under this Scheme by way of widow's pension and child's allowance or children's allowances if there had been a widow of the seaman and the child or children had been living with her or under her control.

(3) A dependant's pension may be paid to the eligible dependant or, where there are two or more such dependants, may be paid to any one of them or divided between any two or more of them in such shares as the Minister may think fit.

(4) Where a widow's pension has been awarded under this Scheme in respect of the death of a seaman, an award under this Article in respect of the death of the seaman shall not be made to any dependant of the seaman other than a parent and may only be made to a parent of the seaman if the widow's pension has ceased to be paid.

(5) A dependant's pension or a share of a dependant's pension payable to a female dependant who is unmarried or a widow shall cease to be payable on the date on which she marries or remarries or begins to live with any person as his wife.

**11. *Special provision for awards in respect of death.***—No award shall be made under this Scheme in respect of the death of a seaman—

- (a) if his death occurs more than seven years after the date of the war injury or of the end of the detention to which his death is claimed to be directly attributable, or
- (b) if a gratuity has been awarded under this Scheme in respect of the disablement of the seaman on the basis that the disablement was directly attributable to the war injury or the detention to which his death is claimed to be directly attributable :

Provided that, where the Minister in the exceptional circumstances of any particular case so directs, an award in respect of the death of a seaman may, notwithstanding the provisions of sub-paragraph (b) of this Article, be made if—

- (i) his death was attributable solely to the war injury or detention to which his disablement was directly attributable ; and
- (ii) his death occurred not later than two years after the date on which that war injury was sustained or that detention came to an end ; and
- (iii) the degree of that disablement was assessed and certified at not more than twenty-five per cent.

**12. *Awards of detention allowances.***—(1) Where a seaman suffers detention, there may be awarded under this Article in respect of that detention a detention allowance for the whole or any part of the period of that detention in accordance with the following provisions of this Article :

Provided that, unless the Minister in the special circumstances of any particular case otherwise directs, a detention allowance shall not be awarded in respect of the detention of a seaman where a claim to that detention allowance is first made more than six months after that detention came to an end.

(2) A detention allowance shall consist of an allowance (hereinafter called “the reserved allowance”) which may be paid to the seaman after his detention has come to an end, and which shall be at the rate specified in the second column of the Fifth Schedule to this Scheme in relation to the class to which the seaman belongs for the purposes of this Scheme.

(3) If and so long as the seaman has a wife, an eligible child or a dependant, a detention allowance shall, in addition to the reserved allowance, consist of an allowance (hereinafter called "the available allowance") which may, either during the detention of the seaman or after his detention has come to an end, be paid to or applied for the benefit of his wife, his eligible child or his dependant or any two or more of them.

(4) The available allowance shall be at such rate as the Minister may from time to time determine having regard to all the circumstances of the case, being a rate which does not exceed the rate specified in the third column of the Fifth Schedule to this Scheme in relation to the class to which the seaman belongs for the purposes of this Scheme.

**13. Time limit for claims in respect of disablement or death.**—Unless the Minister in the special circumstances of any particular case otherwise directs, no award shall be made under this Scheme where a claim to that award is first made more than two years after whichever of the following dates is applicable, that is to say—

(a) in the case of an award in respect of disablement which is claimed to have been directly attributable to a war injury or to detention, the date on which the war injury was sustained or the detention came to an end; and

(b) in the case of an award in respect of death, the date of the death.

**14. Provision as to certain allowances where wages are paid.**—An allowance under Article 6 or under Article 7 or under Article 12 of this Scheme may in respect of any period be withheld or reduced by such amount as the Minister may determine where, in respect of that period, a payment has been or will be made to the seaman, or to the wife or an eligible child or a dependant of the seaman, by way of or in lieu of his wages or by way of compensation for the loss of his wages or in fulfilment of a contract of service entered into by him.

**15. Provision as to negligence.**—Where a war injury or detention, or where disablement or death arising from a war injury or detention, is attributable to the serious negligence or misconduct of the seaman sustaining the war injury or suffering the detention, the Minister may withhold or cancel any award which may be or has been made under this Scheme in respect of the disablement, death or detention of the seaman or may reduce the amount thereof.

**16. Determination of medical questions.**—Where in connection with an application for an award under this Scheme any medical question arises, that question shall not be determined except upon the certificate of a medical officer or board of medical officers appointed or recognised by the Minister for the purpose.

**17. Provisions as to making and payment of awards.**—(1) Notwithstanding anything contained in this Scheme, awards under this Scheme may be made provisionally or upon any other basis and of such amount and, in the case of awards of allowances or pensions for such period and at such rate as the Minister may think fit, so, however, that no award shall be made of an amount or for a period or at a rate exceeding the amount, period or rate authorised by this Scheme in the case of that award.

(2) Any gratuity, allowance or pension awarded under this Scheme shall be paid in such manner as the Minister may direct and any allowance or pension awarded under this Scheme may be paid in advance or in arrear and at such intervals of time as the Minister may think fit.

(3) The Minister may, if he thinks fit in the circumstances of any particular case in which an allowance or a pension under this Scheme may be awarded, award in lieu of that allowance or pension a lump sum of such amount as he considers appropriate in the circumstances of that case.

(4) Where a person to whom a sum of rupees may be paid under this Scheme is outside India, that person may be paid so much of the currency of the place where that person is as, at the rate of exchange prevailing on the day when the payment is made, is equivalent to that sum of rupees.

**18. Administration of awards.**—(1) Any gratuity, allowance or pension which may be paid to a person may, in lieu of being paid to that person, be applied for his benefit if the Minister considers that it is in the interests of that person that it should be so applied.

(2) Any gratuity, allowance or pension which may be applied for the benefit of any person may be so applied by the Minister or may be paid by him for the purpose of being so applied to any other person whom he considers to be a fit and proper person so to apply that gratuity, pension or allowance.

**19. Provision as to conditions on which awards are made.**—Any award under this Scheme of a pension or allowance which may only be awarded if a condition is fulfilled shall cease to have effect if and when that condition is found not to be fulfilled.

**20. Review of awards.**—(1) Notwithstanding anything contained in this Scheme, the Minister may at any time review an award of an allowance or a pension under this Scheme and, if there has been any mistake of fact, or any change in the condition or circumstances of the person to or for the benefit of whom payment under the award is being made, or if that person is in the opinion of the Minister unworthy to receive a payment out of public funds or is being supported in whole or in part out of public funds, or if there is any other reason whatsoever which in the opinion of the Minister is a good and sufficient reason for so doing, the Minister may cancel or suspend the award or reduce the rate thereof.

(2) The Minister may, in his discretion and upon such terms and as from such date (including any past date) as he thinks fit, restore in whole or in part any award which has been cancelled or suspended under paragraph (1) of this Article, and amend the rate of any award which has been reduced under that paragraph.

**21. Administration of Scheme.**—(1) The Minister shall be the sole administrator and interpreter of this Scheme and all questions with respect to the effect or operation of this Scheme shall be determined by him and his decision thereon shall be final and conclusive.

(2) The Minister may make regulations for giving effect to the purposes of this Scheme.

**22. Commencement and citation.**—(1) This Scheme shall be deemed to have come into operation on the third day of September, 1939.

(2) This Scheme may be cited as the War Pensions and Detention Allowances (Indian Seaman, etc.) Scheme, 1941.

Made by the Minister of Pensions with the consent of the Treasury this 14th day of October, 1941.

A. CUNNISON,

*Secretary.*

# FIRST SCHEDULE.

## CLASSIFICATION OF SEAMEN FOR THE PURPOSES OF THIS SCHEME.

Pre-war rate of pay of the capacity of the seaman in rupees per month.	Class of seaman.
60 or more . . . . .	Class I
40 to 59 . . . . .	Class II
30 to 39 . . . . .	Class III
Less than 30 . . . . .	Class IV

# SECOND SCHEDULE.

## RATES OF COMPENSATION FOR TOTAL DISABLEMENT.

Class of seaman.	Rate of compensation in rupees.
Class I . . . . .	5,000
Class II . . . . .	5,000
Class III . . . . .	4,000
Class IV . . . . .	3,000

# THIRD SCHEDULE.

## RATES OF WIVES' ALLOWANCES UNDER ARTICLE 7.

Class of seaman.	Maximum rate of wife's allowance in rupees per week.
Class I . . . . .	6
Class II . . . . .	5
Class III . . . . .	4
Class IV . . . . .	3

**FOURTH SCHEDULE.**  
**RATES OF WIDOWS' PENSIONS.**

Class of seaman.	Rate of widow's pension in rupees per month.
Class I . . . . .	15
Class II . . . . .	12
Class III . . . . .	10
Class IV . . . . .	8

**FIFTH SCHEDULE.**  
**RATES OF DETENTION ALLOWANCES.**

Class of seaman.	Rate of reserved allowance in rupees per month.	Maximum rate of available allowance in rupees per month.
Class I . . . . .	8	24
Class II . . . . .	6	20
Class III . . . . .	5	16
Class IV . . . . .	4	12

[Gazette of India, 1942, Pt. I, p. 215.]

*Commerce Department No. 17-M. II (39)/42-War, dated the 2nd May, 1942.*—The following scheme made by the Minister of War Transport is published for general information :—

**STATUTORY RULES AND ORDERS.**

1941, No. 1956.

**MERCHANT SHIPPING.**

*Compensation (War Damage to Effects).*

The Compensation to Seaman (War Damage to Effects) Scheme, 1941. Dated November 29, 1941.

The Minister of War Transport (hereinafter referred to as "the Minister"), with the consent of the Treasury, in

exercise of the powers conferred upon the Board of Trade by Sections 6 and 7 of Pensions (Navy, Army, Air Force and Mercantile Marine) Act, 1939. (a) (hereinafter referred to as "the Act"), and now vested in him by virtue of the Minister of Shipping (Transfer of Functions) Order, 1939, (b) and the Ministers of the Crown (Minister of War Transport) Order, 1941, (c) and of all other powers enabling him in that behalf hereby makes the following Scheme:—

1. In this Scheme the following expressions have the meanings hereby respectively assigned to them, that is to say—

"certificated officer" means an officer of a ship who—

- (a) is duly certificated within the meaning of Section 92 of the Merchant Shipping Act, 1894, (d) or is the holder of a certificate of competency which, under Section 102 of that Act, has the same force as if it had been granted under that Act, or is the holder of a certificate of service granted under Section 99 of that Act; or
- (b) is deemed, under Regulation 47C of the Defence (General) Regulations, 1939, for the purposes of Section 92 of the Merchant Shipping Act, 1894, to hold a certificate of competency; or
- (c) is, under the authority of the Minister, serving as second-class engineer in place of a certificated second-class engineer which the ship is, by Section 92 of the Merchant Shipping Act, 1894, required to carry;

"fishing boat" has the same meaning as in Section 370 of the Merchant Shipping Act, 1894;

"mariner" means the master or a member of the crew of any British ship which is not a ship registered in—

- (a) any Dominion within the meaning of the Statute of Westminster, 1931, (e) except Newfoundland and New Zealand; or
- (b) India, unless the ship is so registered under the Merchant Shipping Acts, 1894 to 1940; or
- (c) Burma;

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(a) 2 & 3 Geo. 6, c. 83.

(b) S. R. & O. 1939 (No. 1470) II, p. 3051.

(c) S. R. & O. 1941 No. 654.

(d) 57 & 58 Vict., c. 60.

(e) 22 & 23 Geo. 5, c. 4.



being a person employed or engaged in sea-going service and not being—

- (i) a member of His Majesty's naval forces ; or
- (ii) a person subject to the Naval Discipline Act by virtue of Section 90 of that Act ; or
- (iii) a member of the pilotage service or the light vessel service ;

“ member of the pilotage service ” means a pilot, an apprentice pilot, or the master or a member of the crew of a pilot boat ;

“ member of the light vessel service ” means the master or a member of the crew of a lightship, lighthouse tender or lightship tender ;

“ passenger ship ” means a ship in respect of which there is in force a passenger steamer's certificate issued under Part III of the Merchant Shipping Act, 1894, or a certificate which, under Section 284 of that Act, has the same force as if it had been granted under that Act ;

“ war damage ” means—

- (i) in relation to the effects of a mariner, war damage as defined by Section 10 of the Act sustained in the circumstances mentioned in sub-section (2) of Section 3 of the Act ;
- (ii) in relation to the effects of a member of the pilotage service or of the light vessel service, war damage as defined by Section 10 of the Act sustained in the circumstances mentioned in sub-section (3) of Section 4 of the Act.

2. Every person who, as a mariner, member of the pilotage service or member of the light vessel service, sustains war damage to his effects, excluding war damage to any such articles as are mentioned in the First Schedule to this Scheme sustained after the 31st July, 1940, other than a loss thereof, may make a claim to the Minister for compensation in respect thereof ; and the Minister may, subject to the provisions of this Scheme, pay to that person in respect of such a claim an amount not exceeding the maximum amount payable to him in accordance with the following scales :—

- (a) in respect of the loss of any such articles as are mentioned in the First Schedule to this Scheme, sustained after the 31st July, 1940, in accordance with the scale set out in that Schedule ; and
- (b) (i) where he was employed or engaged in seagoing service as the master or a member of the crew of a British ship on terms and conditions which

are customary, or are similar to those customary, in the case of an Indian recruited in India for seagoing service as the master or a member of the crew of such a ship, in accordance with the scale set out in Part I of the Second Schedule to this Scheme ; or

- (ii) where he was employed or engaged in seagoing service as the master or a member of the crew of a British ship on terms and conditions which are customary, or are similar to those customary, in the case of a Chinese person recruited in a Far Eastern port for seagoing service as the master or a member of the crew of such a ship, in accordance with the scale set out in Part II of the Second Schedule to this Scheme ; or

- (iii) in any other case, in accordance with the scale set out in the Third Schedule to this Scheme :

Provided that in respect of any claim made after the 31st March, 1941, the maximum amounts payable in accordance with the scales set out in the Second and Third Schedules to this Scheme may be increased by  $33\frac{1}{3}$  per cent.

3. In the event of the death of a person who, if he had survived, could have made a claim for compensation in respect of war damage to his effects, such claim may be made by his legal personal representative, or, in any case where the amount of the claim when added to the value of any other property of the deceased in the hands of the Minister does not exceed one hundred pounds, by any person who is proved to the satisfaction of the Minister to be the widow or a child of the deceased, or to be entitled to the personality of the deceased either by will (if any) or any statute of distribution or otherwise, or to be a person entitled to take out representation, although no such representation has been taken out ; and if more than one person is enabled by the foregoing provisions of this Article to make any such claim the Minister may determine by which of such persons the claim may be made and may pay to that person in respect of such claim the amount that would have been payable to the deceased if he had survived and made the claim.

4. Every claim for compensation made under this Scheme shall be made in such form and manner as may be approved by the Minister and no claim shall be entertained unless made within a period of one year from the time when the war damage was sustained or within such extended period as may be allowed by the Minister.

5. (1) The Compensation to Seamen (War Damage to Effects) Scheme, 1939, (a) amended by the Compensation to Seamen (War Damage to Effects) Scheme, 1939 (Amendment) Order, 1939, (b) and the Compensation to Seamen (War Damage to Effects) Amendment Scheme, 1940, (c) are hereby revoked without prejudice, however, to the validity of anything done thereunder before the 29th November, 1941.

(2) Any claim made or compensation paid before the 29th November, 1941, under any Scheme hereby revoked shall, so far as the claim could have been made or the compensation could have been paid under this Scheme, have effect as if made or paid, as the case may be, under this Scheme.

6. (1) This Scheme shall be deemed to have come into operation on the 3rd September, 1939, and may be cited as the Compensation to Seamen (War Damage to Effects) Scheme, 1941.

(2) The Interpretation Act, 1889, (d) shall apply to the interpretation of this Scheme as it applies to the interpretation of an Act of Parliament.

Signed by authority of the Minister of War Transport this twenty-ninth day of November, 1941.

E. J. FOLEY,

*A Deputy Director General of the  
Ministry of War Transport.*

### FIRST SCHEDULE.

#### DENTURES, OPTICAL APPLIANCES AND TRUSSES.

	Maximum amount of compensation payable for loss sustained after 31st July, 1940, where replacement has been made—					
	After 31st July, 1940, and before 15th September, 1941.			On or after 15th September, 1941.		
	£	s.	d.	£	s.	d.
Dentures—						
Upper or Lower Dentures .	2	15	0	3	0	0
Upper and Lower Dentures .	5	10	0	5	18	0
	After 31st July, 1940.					
		s.	d.			
Trusses . . . . .		15	0			

(a) S. R. & O. 1939 (No. 1070) II, p. 2011.

(b) S. R. & O. 1939 (No. 1121) II, p. 2014.

(c) S. R. & O. 1940 (No. 29) I, p. 559.

(d) 52 & 53 Vict., c. 63.

DENTURES, OPTICAL APPLIANCES AND TRUSSES—*contd.*

Optical Appliance—	Maximum amount of compensation payable for loss sustained after 31st July, 1940, where replacement has been made—	
	After 31st July, 1940, and before 1st September, 1941.	On or after 1st September, 1941.
	s. d.	s. d.
With Spherical lenses . . . .	5 6	6 3
With cylindrical or spherocylindrical lenses . . . .	8 0	8 9
With one spherical and one cylindrical or spherocylindrical lens . . . .	6 9	7 6
Sight testing fee . . . .	5 0	5 0

SECOND SCHEDULE.

PART I.—EMPLOYMENT ON INDIAN TERMS AND CONDITIONS.

Rank or Rating—	Maximum amount† of compensation payable for war damage to effects.*
	£ s. d.
Chief Steward or Butler, Chief or Ship's Cook . . . .	15 0 0
Other Ratings in Stewards' and Cooks' Department—	
Passenger Ship or Troop Transport :—	
Rating above Topass . . . . .	10 0 0
Topass and similar ratings . . . . .	6 0 0
Other Ships :—	
Ratings above Topass . . . . .	7 10 0
Topass and similar ratings . . . . .	6 0 0
Serangs . . . . .	10 0 0
Tindals, Paniwallas, Cassabs, Seacunnies and other leading ratings . . . . .	7 10 0
Lascars, Topasses, Bhandaries and other similar ratings . . . . .	6 0 0†

\* The expression "effects" does not in this Schedule include such articles as are mentioned in the First Schedule where the war damage is sustained after the 31st July, 1940.

† Where damage to the effects of these ratings was sustained before the 1st May, 1940, the maximum amount of compensation payable is £4.

‡ Where claim submitted after 31st March, 1941, the maximum amount payable may be increased by 33½ per cent.

## PART II.—EMPLOYMENT ON CHINESE TERMS AND CONDITIONS.

	Maximum amount† of compensation payable for war damage to effects* sustained—	
	Before 1st April, 1941.	On or after 1st April, 1941.
Rank or Rating—	£ s. d.	£ s. d.
Chief Steward or Butler, Chief or Ship's Cook . . . .	15 0 0	15 0 0
Other Ratings in Stewards' and Cooks' Department—		
Passenger Ship or Troop Transport:—		
Ratings above Galley Boy . .	10 0 0	10 0 0
Galley Boy and other similar ratings . . . . .	6 0 0	6 0 0
Other Ships—		
Rating above Galley Boy . .	7 10 0	8 0 0
Galley Boy and other similar ratings . . . . .	6 0 0	6 0 0
Carpenters' effects (exclusive of tools) . . . . .	7 10 0	10 0 0
Tools . . . . .	20 0 0	20 0 0
Fitters' effects (exclusive of tools) . . . . .	7 10 0	10 0 0
Tools . . . . .	5 0 0	7 10 0
Boatswains and No. I Firemen . . . . .	10 0 0	10 0 0
Donkeymen, Winchmen, Lampmen, Leading Firemen, Painters and other ratings . . . . .	7 10 0	8 0 0
Sailors, Greasers, Firemen, Trimmers, Barbers and other similar ratings . .	6 0 0†	8 0 0

\* The expression "effects" does not in this Schedule include any such articles as are mentioned in the First Schedule, where the war damage is sustained after the 31st July, 1940.

† Where damage to the effects of these ratings was sustained before the 1st May, 1940, the maximum amount payable is £4.

‡ Where claim submitted after 31st March, 1941, the maximum amount payable may be increased by 33½ per cent.

### THIRD SCHEDULE.

#### MERCHANT SHIPS, PILOT BOATS, LIGHTHOUSE TENDERS, LIGHTSHIP TENDERS.

	Maximum amount* of compensation payable for war damage to effects† sustained—					
	Before 1st February, 1940.			On or after 1st February, 1940.		
Rank or Rating—	£	s.	d.	£	s.	d.
Master . . . . .	100	0	0	100	0	0
Certificated Officers, Surgeons, Pursers . . . . .	50	0	0	50	0	0
Radio Officers‡ . . . . .	40	0	0	40	0	0
Uncertificated Officers . . . . .	40	0	0	40	0	0
Apprentices . . . . .	40	0	0	40	0	0
Carpenters' effects (exclusive of tools) . . . . .	15	0	0	15	0	0
Tools . . . . .	20	0	0	20	0	0
Boatswains . . . . .	10	0	0	12	10	0
Donkeymen, Quartermasters and Plumbers § . . . . .	10	0	0	10	0	0
Seamen, Greasers, Firemen, Trimmers and other similar ratings . . . . .	7	10	0	10	0	0
Pilots and Apprentice Pilots . . . . .	15	0	0	15	0	0
Ratings in Stewards' Department—						
Passenger Ship or Troop Transport:—						
Chief Steward . . . . .	40	0	0	40	0	0
Ratings above Assistant Steward . . . . .	30	0	0	30	0	0
Assistant ratings other than boy ratings . . . . .	15	0	0	15	0	0
Boy ratings . . . . .	7	10	0	8	0	0
Other Ships—						
Chief Stewards and Chief Cooks . . . . .	30	0	0	30	0	0
Second Cook and Second Steward . . . . .	15	0	0	15	0	0
Ratings not above rank of Assistant . . . . .	7	10	0	8	0	0
FISHING BOATS.						
Master or Skipper . . . . .	30	0	0	30	0	0
Second Hands and Wireless Operators . . . . .	15	0	0	15	0	0
Engineman . . . . .	10	0	0	10	0	0
Deckhand, Fireman, Cook and other similar ratings . . . . .	7	10	0	7	10	0
LIGHTSHIPS.						
Master of Lightship . . . . .	30	0	0	30	0	0
All other members of the crew . . . . .	7	10	0	10	0	0

\* Where claim submitted after 31st March, 1941, the maximum amount payable may be increased by 33½ per cent.

† The expression "effects" does not in this Schedule include any such articles as are mentioned in the First Schedule, where the war damage is sustained after the 31st July, 1940.

‡ Where damage to the effects of a Radio Officer has been sustained on or after the 15th August, 1941, the maximum amount of compensation payable is £50.

§ Where damage to the effects of a plumber has been sustained after the 31st May, 1940, the maximum amount of compensation payable is as follows:—

Effects (exclusive of tools) . . . . .	£15
Tools . . . . .	£10

[Gazette of India, 1942, Pt. I, p. 785.]

*E. A. Department No. 26-W., dated the 22nd November, 1939.*—The following extract from the *London Gazette*, dated 12th September, 1939, is published for general information :—

“ His Majesty’s Principal Secretary of State for Foreign Affairs hereby gives notice that the following must be regarded as areas in the occupation of Germany :—

The territories comprising :—

- (1) The Protectorates of Bohemia and Moravia.
- (2) Slovakia.
- (3) The Free City of Danzig. ”

[*Gazette of India*, 1939, Pt. I, p. 1879.]

*E. A. Department No. 24-W., dated the 21st November, 1940.*—The following extract from the *London Gazette*, dated the 12th July, 1940, is published for general information :—

“ His Majesty’s Principal Secretary of State for Foreign Affairs hereby gives notice that the following must be regarded as areas in the occupation of Germany :—

- (i) The Norwegian Provinces of Nordland, Troms and Finnmark.
- (ii) Those parts of Metropolitan France occupied by Germany in accordance with the terms of the Franco-German Armistice Convention of the 22nd June, 1940. ”

[*Gazette of India*, 1940, Pt. I, p. 1641.]

*E. A. Department No. 12-W., dated the 23rd April, 1941.*—The following extract from the *London Gazette*, dated the 18th February, 1941, is published for general information :—

“ His Majesty’s Principal Secretary of State for Foreign Affairs hereby gives notice\*\*\*\*that the following must be regarded as territory in German occupation :—

The Kingdom of Roumania. ”

[*Gazette of India*, 1941, Pt. I, p. 597.]

*E. A. Department No. 17-W., dated the 22nd July, 1941.*—The following extracts from the *London Gazette*, dated the 11th and the 22nd April, 1941, respectively, are published for general information :—

“ His Majesty’s Principal Secretary of State for Foreign Affairs hereby gives notice \* \* \* that the following must be regarded as territory in enemy occupation :—

The Kingdom of Hungary. ”

“ His Majesty’s Principal Secretary of State for Foreign Affairs hereby gives notice \* \* \* \* that the

following must be regarded as territory in enemy occupation :—

The Kingdom of Yugoslavia.”

[*Gazette of India*, 1941, Pt. I, p. 1041.]

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*E. A. Department No. 21-W., dated the 27th August, 1941.*—The following extract from the *London Gazette*, dated the 6th May, 1941, is published for general information :—

“ His Majesty’s Principal Secretary of State for Foreign Affairs hereby gives notice \* \* \* \* that the following must be regarded as territory in enemy occupation :—

The mainland of Greece.”

[*Gazette of India*, 1941, Pt. I, p. 1213.]

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*E. A. Department No. 32-W., dated the 1st December, 1941.*—The following extract from the *London Gazette*, dated the 5th August, 1941, is published for general information :—

“ His Majesty’s Principal Secretary of State for Foreign Affairs hereby gives notice \* \* \* \* that the following must be regarded as territory in enemy occupation :—

The Republic of Finland.”

[*Gazette of India*, 1941, Pt. I, p. 1748.]

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*E. A. Department No. 38-W., dated the 20th April, 1942.*—The following extract from the *London Gazette*, dated the 2nd January, 1942, is published for general information :—

“ His Majesty’s Principal Secretary of State for Foreign Affairs gives notice \* \* \* \* that the following must be regarded as territory in enemy occupation :—

Japanese-occupied China, including Manchuria, the whole coast of China and the International Settlement and the French Concession at Shanghai, but excluding Macao.

Hong Kong.

Indo-China.”

[*Gazette of India*, 1942, Pt. I, p. 740.]



*P. S. V's No. 63-H., dated the 22nd June, 1940.*—His Imperial Majesty the King, Emperor of India, has given commands for withdrawal of all permissions previously granted for wearing by British subjects of German and Italian decorations and medals. It is hereby notified therefore that all such permissions should be regarded as cancelled.

[*Gazette of India*, 1940, Extraordinary, p. 257.]

